

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

RMS TITANIC, INC., et al., CASE NO: 3:16-bk-02230-PMG
Debtors.

/

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: August 30, 2018
TIME: 1:30 p.m. - 5:15 p.m.
PLACE: United States Courthouse
300 North Hogan Street
Courtroom 4A
Jacksonville, Florida 32202
BEFORE: The Honorable Paul M. Glenn
U.S. Bankruptcy Judge

This cause came on to be heard at the time and place
aforesaid, when and where the following proceedings
were transcribed by:

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P R O C E E D I N G S

August 30, 2018

1:30 p.m.

- - -

THE COURT: Court is in session for August 30. On the calendar at this time this afternoon is the case of RMS Titanic, Inc., Chapter 11 case.

We're set for this hearing on a disclosure statement by unsecured creditors, a disclosure statement by Equity and Premier Exhibitions, and a motion for approval of competitive bidding and sale procedures.

There are appearances in the courtroom and by conference telephone.

Let me first take appearances of those in the courtroom.

MR. BLANKS: Good afternoon, Your Honor. Daniel Blanks from Nelson Mullins on behalf of Debtor. Also at counsel table with me this afternoon is my co-counsel, Harris Winsberg, and Mathew Brooks with the law firm of Troutman Sanders. In addition, the corporate secretary of the Debtor, Ms. Jessica Sanders.

THE COURT: Very good. Ms. Sanders, Mr. Brooks, Mr. Winsberg and Mr. Blanks.

Other appearances.

1 MR. BROWN: Thank you, Your Honor. May it
2 please the Court, Jay Brown of Ackerman LLP
3 appearing on behalf of the Official Committee of
4 Equity Security Holders of Premier Exhibitions,
5 Inc., along with with my co-counsel, Peter Gurfein,
6 of Landau Gottfried & Berger.

7 Thank you.

8 THE COURT: Mr. Brown, Mr. Gurfein, good
9 afternoon.

10 MR. CHUBAK: Jeffrey Chubak from Storch Amini,
11 PC. With me is Rick Thames, Rob Heekin, and Ezra
12 Jones, a member of the Unsecured Creditors
13 Committee.

14 THE COURT: Mr. Chubak, Mr. Heekin, Mr. Jones.

15 MS. REDMOND: Good afternoon, Your Honor.
16 Patricia Redmond, together with Steven Szanzer,
17 James McClammy and Jacob Weiner of the Davis Polk
18 Wardwell firm on behalf of the Trustees of the
19 National Maritime Museum.

20 THE COURT: Very good. Ms. Redmond and
21 others.

22 Other appearances in the courtroom?

23 MS. FELDCHER: Good afternoon, Your Honor.
24 Jennifer Feldsher from Bracewell on behalf of
25 Premier Acquisition Holdings, Apollo and Alta. In

1 the courtroom with me today is Rob Giavone from
2 Apollo, and Gilbert Li and Bretton Hunchak from
3 Alta, Your Honor, as well.

4 THE COURT: Very good. Thank you. Gentlemen.

5 MR. GROSSMAN: Good afternoon, Your Honor.
6 Scott Grossman of Greenberg Traurig on behalf of
7 Lange Feng, HaiPing Zou, Jihe Zhang, PacBridge
8 Capital Partners, and as co-counsel to Premier
9 Acquisition Holdings. And also with me in the
10 courtroom today is Mr. Giovanni Wong of PacBridge.

11 THE COURT: Gentlemen, Mr. Grossman, good
12 afternoon.

13 Other appearances in the courtroom?

14 MR. TROY: Matthew Troy, Your Honor, United
15 States Department of Justice, Civil Division, on
16 behalf of NOAA.

17 MR. BURNETT: May it please the Court, Jason
18 Burnett of the firm GrayRobinson appearing on
19 behalf of 417 Fifth Avenue, LLC, and the Lexor
20 Hotel. Appearing also with me, Your Honor, is my
21 associate, Ms. Ashley Edwards.

22 THE COURT: Very good.

23 MR. FOX: Good afternoon, Your Honor. I'm
24 Steven Fox. I represent Cedar Bay, a potential
25 buyer of the assets. With me today is Mr. Paul

1 Burns, who does curate approximately 2,000 TITANIC
2 artifacts separate from the Debtor's artifacts.

3 THE COURT: Very good. Thank you, Mr. Fox.

4 MS. KELSO: Good afternoon, Your Honor. Jill
5 Kelso on behalf of the United States Trustee.

6 THE COURT: Ms. Kelso.

7 Others in the courtroom?

8 (No response.)

9 THE COURT: All right. And now we have
10 several appearances by conference telephone.

11 First for the Committee of Equity Security
12 Holders. Mr. Charbonneau.

13 MR. CHARBONNEAU: Yes. Good afternoon, Your
14 Honor. Robert Charbonneau of Agentis. We're
15 special litigation counsel to the Equity Committee
16 of Premier.

17 THE COURT: Very good. Mr. Charbonneau.

18 Appearance by telephone for the U.S.
19 Department of Commerce. Mr. Craig.

20 MR. CRAIG: Yes, Your Honor. Russell Craig
21 for the Commerce Department. And I have in my
22 office with me Ms. Jackie Rolrey of the National
23 Oceanic & Atmospheric Administration, as well as
24 Mr. Olevarla, also of the National Oceanic &
25 Atmospheric Administration. We are just on a

1 listen-only status.

2 THE COURT: Very good. Thank you, Mr. Craig.

3 Now telephone appearance for Trustees of the

4 National Maritime Museums. Mr. Graulich.

5 MR. GRAULICH: Yes. Good afternoon, Your

6 Honor. Timothy Graulich of Davis Polk & Wardwell,

7 on behalf of the Trustees of the National Maritime

8 Museum.

9 THE COURT: Very good. Thank you.

10 Now telephone appearance for Bay Point Capital

11 Partners. Mr. Isbell.

12 MR. ISBELL: Yes. Good afternoon, Your Honor.

13 John Isbell on behalf of the debtor-in-possession

14 lender, Bay Point Capital Partners.

15 THE COURT: Very good. Mr. Isbell.

16 Now telephone appearance for Euclid Claims

17 Recovery. Mr. Siegel.

18 MR. SIEGEL: Yes. Good afternoon, Your Honor.

19 Howard Siegel for Euclid Claims Recovery.

20 THE COURT: Good afternoon.

21 Now an appearance for the Debtor, RMS Titanic.

22 Mr. Wainger.

23 MR. WAINGER: Good afternoon, Your Honor.

24 It's Brian Wainger from Kaleo Legal on behalf the

25 Debtors. I have the Debtor's, Premier Exhibitions'

1 president, Daoping Bao, on the line with me as
2 well.

3 Thank you, Judge.

4 THE COURT: Very good. Thank you, Mr.
5 Wainger.

6 And last telephone appearance, Trustees of the
7 National Maritime Museum. Mr. Weiner.

8 MR. WEINER: Your Honor, I'm present.

9 THE COURT: Oh, sorry. I put you up with the
10 others.

11 Any other appearances in the courtroom or by
12 telephone?

13 (No response.)

14 All right. Well, first on the calendar is the
15 disclosure statement by filed by interested parties
16 and unsecured creditors.

17 MR. WINSBERG: Your Honor, if I may give the
18 Court an update?

19 THE COURT: Please.

20 MR. WINSBERG: For the record, Your Honor,
21 Harris Winsberg from Troutman Sanders on behalf of
22 the Debtors.

23 Your Honor, Your Honor set this over -- had a
24 status conference hearing and entered an order
25 bringing us back today on all three matters: The

1 Debtor's motion to approve pre-bid procedures and
2 the two disclosure statements, one by the Creditors
3 Committee and one by the Equity Committee for
4 today.

5 We do have a material development since the
6 last hearing. We have reached a resolution with
7 Jason Burnett's client, the 417 landlord, which is
8 the largest unsecured creditor in the case, and has
9 a blocking position in the unsecured class as far
10 as voting.

11 The stalking horse purchaser, which is
12 represented by Ms. Feldsher and Mr. Grossman in the
13 courtroom, has increased. It's going to increase
14 its purchase price from \$17.5 million to \$19.5
15 millin.

16 Glass Ratner estimates that -- projects an
17 estimated recovery of unsecureds with that movement
18 to 80 cents for the unsecured class.

19 In light of the fact that the stalking horse
20 purchaser under this agreement is bumping up its
21 purchase price, the Debtors have agreed to increase
22 the cap on the break fee and expense reimbursement,
23 which is proposed at \$1 million, to increase it to
24 \$1.5 million, to be payable out of an alternative
25 transaction that closes even if that transaction

1 closes not in compliance with the bid procedures
2 that we're proposing with the Court.

3 Part of this deal, Your Honor, and you'll hear
4 testimony today, liquidity is critical. We touched
5 on it at the last hearing. Your Honor mentioned it
6 in Your Honor's scheduling order. This Debtor is
7 on a very short leash.

8 We'd ask, Your Honor, as part of this deal,
9 because the stalking horse purchaser does not want
10 to buy a business that's dead on arrival and does
11 not want to have employees that are disgruntled or
12 have already left, and some already have -- we have
13 Ms. Sanders in the courtroom and will testify to
14 that -- that their bid procedures would be moved
15 up; that we'd ask Your Honor to have the bid
16 deadline moved up to September 17th, the bid
17 procedure deadline; that we have an auction,
18 subject to Your Honor's calendar, for the morning
19 of September 20th, and we can do it in Your Honor's
20 courtroom; and that we have the sale hearing for
21 the prevailing bidder later that day, in the
22 afternoon of September 20, also in Your Honor's
23 courtroom.

24 The conditions for the increase in the
25 purchase price is Your Honor's non-approval of both

1 disclosure statements moving forward.

2 The landlord, Mr. Burnett's client, has agreed
3 to support the sale motion, has also agreed to
4 withdraw its joinder to Euclid's objection that it
5 filed.

6 The landlord has also agreed to oppose both
7 disclosure statements that are filed, and
8 affirmatively state to this Court that it will not
9 vote in favor of either disclosure statement or
10 both should Your Honor let them move forward today.

11 Your Honor, we believe that that makes these
12 disclosure statements patently unconfirmable for
13 both that they both still lack funding, which we'll
14 put evidence in the record on that, and because
15 there's no way either plan can get an impaired
16 accepting class in this case.

17 And I want to stop as I want to ask that
18 counsel for the stalking horse purchasers to come
19 up and confirm that agreement, as well as Mr.
20 Burnett.

21 THE COURT: Thank you.

22 MR. BURNETT: Good afternoon, Your Honor,
23 Jason Burnett.

24 I will confirm exactly what Debtors' counsel
25 just stated. I believe, Your Honor, this will

1 bring an expeditious conclusion to what has been a
2 case that has gone on for quite some time.

3 This was not an easy process for myself or for
4 any counsel that's in the room. And, again, I
5 always want to congratulate all counsel and thank
6 them for the hard work that's gone into it.

7 But with the stalking horse moving their
8 purchase price up to 19.5, and that is still an
9 auction process, Your Honor, that guarantees --
10 well, the estimated guarantee, I should say, to
11 unsecured creditors is 80 percent.

12 This does not affect the litigation, the D&O
13 litigation, that's going to hopefully go forward
14 and/or claims objection. So there still is an
15 excellent opportunity for unsecured creditors to
16 get, in my opinion, close to 100 percent return,
17 maybe even more.

18 But be that as it may, we think this is a good
19 time for a good solution, and we believe that this
20 would wrap this case up rather expeditiously.

21 So we would ask the Court to approve the sale
22 motion as outlined by Debtors' counsel, and we
23 would ask the Court to not approve of any
24 disclosure statements going out or being solicited
25 or being approved at this time.

1 Thank you.

2 THE COURT: Thank you.

3 MS. FELDSHER: Good afternoon, Your Honor.

4 We'll tag-team this. In case I say it wrong, Mr.
5 Grossman will correct the record. Hopefully I will
6 not.

7 Your Honor, we rise to also confirm the
8 Debtors' summary of the deal that we have, and just
9 to add very, very briefly a little bit of color
10 with respect to how we got to that point.

11 Your Honor, the willingness of the stalking
12 horse bidder to come up on its price is not because
13 of anything other than genuine concern for where
14 this business stands today. And I won't prejudge
15 the evidence that will be put on by the Debtors,
16 but we filed the declaration in advance of this
17 hearing which laid out for the Court just briefly
18 how difficult this process, the negotiations, the
19 extensive time that the stalking horse bidder has
20 put in.

21 These are complicated issues. These assets
22 are complicated. They're in multiple countries,
23 with issues involved. They've got a regulatory
24 overlay which Your Honor has heard about at length.
25 And it was -- it took a significant amount of time,

1 many hours, and not an insignificant amount of
2 expenses for the stalking horse bidder to get to a
3 signed APA with the Debtors and to get to this
4 point.

5 But, as we mentioned to Your Honor at the last
6 hearing, our client is the only client that is
7 looking to buy this asset as a going concern at
8 this point. I don't know who will come to the
9 auction, but right now, of what's before you, we're
10 the only ones that are buying this as a going
11 concern. We want the employees, we want the
12 business, and the business is really at a very
13 critical time.

14 So the willingness to go up was specifically
15 tied to the timeline, and that was just important
16 for us to say.

17 And obviously that we believe the incentives
18 and the APA are appropriate given that we're the
19 only client that has put up a deposit, as Your
20 Honor knows, and has the financial wherewithal
21 today to do the transaction. But that will be
22 tested at an auction.

23 Thank you, Your Honor.

24 THE COURT: Thank you.

25 MR. WINSBERG: With that, Your Honor, and I

1 learned this when I was a baby lawyer when I worked
2 for Judge Williamson when he was still in private
3 practice, what I'd like to suggest, Your Honor, is
4 reserve argument and just lead with our witnesses.
5 We have two witnesses today that can testify as to
6 the arm's-length, good-faith nature of the
7 transactions, that this was bargained in good
8 faith, and that these Debtors need to go forward
9 with this transaction now.

10 The company literally will be out of cash on
11 January 1, 2019.

12 So I'd like to call Marshall Glade to the
13 stand if that's okay, Your Honor.

14 MR. MCCLAMMY: Your Honor, if I may. Jim
15 McClammy on behalf of the Trustees of the National
16 Maritime Museum.

17 Given that we've just heard this for the first
18 time, essentially, here in the courtroom, do you
19 mind if I take a minute before we start with
20 witnesses?

21 THE COURT: Any objection to that?

22 MR. WINSBERG: I'm trying to understand what
23 their request is.

24 THE COURT: Not a recess, you just want to
25 discuss things?

1 MR. MCCLAMMY: I may, in fact, request a short
2 recess, but there's a couple statements I would
3 like to make also before we continue.

4 I believe our disclosure statement was first
5 on the agenda, but we deferred. But we've heard
6 this now for the first time. Just a couple of
7 items I'd like to raise with the Court first.

8 MR. WINSBERG: So, Your Honor, putting aside
9 the museum does not have standing in this
10 courtroom, it's not a creditor, not a party in
11 interest, it's just a potential bidder, we are very
12 concerned about the Court's time. It's the
13 afternoon. We have some witnesses we want to put
14 on. We just want to get through the hearing today,
15 Your Honor.

16 This company, there's 120-plus jobs, 130 jobs.
17 They just cannot wait any longer for any further
18 delays in this case.

19 THE COURT: Mr. Gurfein?

20 MR. GURFEIN: If I may, Your Honor,
21 considering the magnitude of what we've learned
22 today, I would ask for just a few minutes to digest
23 and confer. It may shorten the proceedings later
24 if we have an opportunity to, again, digest what
25 we've learned.

1 THE COURT: Well, let me ask you this: I
2 understand your concern. Should we hear the
3 testimony first and then you can confer?

4 MR. WINSBERG: We want to proceed, Your Honor.
5 If what they're asking for is literally a five-
6 minute break, I'm okay with that, Your Honor, but
7 we need to move this case.

8 MR. MCCLAMMY: Your Honor, we're not trying to
9 stand in the way, by any means, of the case moving
10 forward.

11 We've heard this for the time today after
12 seeing the recently filed support for our position
13 by the landlord that it's now withdrawn, and
14 apparently an agreement that the disclosure
15 statements can't go forward. And it's unclear to
16 us why, especially given that this process would
17 involve approval by the Eastern District of
18 Virginia, we wouldn't have everything go forward,
19 because if one fails to get approval of the
20 district court, we'd be right back here in front of
21 Your Honor.

22 So I think there's some things that we'd like
23 to understand, in addition to our clients being in
24 Europe and having a chance to respond, I'd like to
25 make a couple of quick calls.

1 THE COURT: Five-minute recess till 2:00
2 clock.

3 MR. GURFEIN: Thank you, Your Honor.

4 MR. WINSBERG: Thank you, Your Honor.

5 (Short recess.)

6 THE COURT: All right. Court continues in
7 session for August 30, and we continue with the
8 hearing on the RMS Titanic.

9 MR. WINSBERG: Your Honor, two housekeeping
10 notes. I noted from one of your courtroom deputies
11 that the courtroom is going to be closing at 4:45
12 today.

13 THE COURT: We have to be out of the building
14 by 5:00.

15 MR. WINSBERG: So we're going to be mindful
16 and try to move as quickly as we can.

17 The one other housekeeping matter before I
18 call Mr. Glade, I understand, Mr. Chubak, the
19 Creditors Committee, is going to be withdrawing its
20 disclosure statement, but I'll let Mr. Chubak --

21 MR. CHUBAK: I just want to correct that for a
22 moment. Jeffrey Chubak from Storch Amini on behalf
23 of the Creditors Committee.

24 I do not have authority from my committee to
25 withdraw support for the disclosure statement. The

1 announcement was just very recently made. We found
2 about it not long ago. However, we'd be hard
3 pressed to move forward with solicitation with the
4 knowledge that the largest unsecured creditor in
5 the case that has a blocking position wouldn't
6 support the same.

7 THE COURT: Very good. Thank you, Mr. Chubak.

8 MR. WINSBERG: With that, Your Honor --

9 MR. GURFEIN: If I may --

10 MR. WINSBERG: : -- call Mr. Glade to the
11 stand.

12 THE COURT: Mr. Gurfein?

13 MR. GURFEIN: One quick statement in light of
14 that, Your Honor. Peter Gurfein for the Equity
15 Committee.

16 Just so Your Honor is aware, the Equity
17 Committee will not be withdrawing its plan. The
18 disclosure statement has a couple of corrections to
19 be made to it, but we intend to go forward with the
20 plan.

21 THE COURT: Very good. Thank you, Mr.
22 Gurfein.

23 MR. WINSBERG: Your Honor, with your
24 permission, I'd like to call Mr. Glade, Marshall
25 Glade from Glass Ratner, to the witness stand.

1 THE COURT: Thank you.

2 WHEREUPON,

3 MARSHALL GLADE

4 acknowledged having been duly sworn to tell the truth,
5 and testified upon his oath as follows:

6 THE WITNESS: I do.

7 COURTROOM ADMINISTRATOR: Please be seated.

8 DIRECT EXAMINATION

9 BY MR. WINSBERG:

10 Q Good afternoon, Mr. Glade. Could you please
11 state your name for the Court?

12 A Marshall Glade.

13 Q And can you briefly describe your educational
14 background?

15 A I have a master's of accountancy from the
16 University of Georgia.

17 Q And where were you currently employed?

18 A Glass Ratner.

19 Q And can you describe for the Court what Glass
20 Ratner does?

21 A Glass Ratner is a financial advisory firm. We
22 provide forensic accounting, evaluation and litigation
23 support. We do bankruptcy and restructuring. And our
24 final area is sort of corporate finance, due diligence
25 types assignments.

1 Q And what is your current title with Glass
2 Ratner?

3 A Managing director.

4 Q And what are your responsibilities?

5 A As managing director, I lead and manage our
6 bankruptcy and restructuring cases.

7 Q Can you describe for the Court your work
8 experience?

9 A Yes. I spent -- I've been with Glass Ratner
10 now 11 years. Before that, for three years I was an
11 auditor with Grant Thornton.

12 Q And how many companies have you sold or
13 restructured in your experience?

14 A I've restructured at least 15 companies. I've
15 sold three companies.

16 Q And can you please describe for the Court the
17 size of the three companies you've sold?

18 A They've ranged in size from about \$20 million
19 in revenue to \$40 million in revenue.

20 Q And do you know how that compares with the
21 Debtors?

22 A Yes. It's in line with the Debtors. Debtors
23 generate about \$20 million in revenue.

24 Q Now, can you describe for the Court how you're
25 familiar with the Debtors in this case?

1 A Yes. Glass Ratner was engaged as financial
2 advisor to the Debtors in about October of 2016. And
3 then in the spring, early summer of 2017, that role was
4 special expanded to sale advisor.

5 Q And Glass Ratner's role as financial advisor,
6 were you personally involved with that?

7 A Yes.

8 Q And how were you involved?

9 A I met with management, developed cash flow
10 projections, began to assist in communications with the
11 various parties that arose out of the bankruptcy.

12 Q And as part of the sale advisor engagement at
13 Glass Ratner, were you personally involved with that?

14 A Yes.

15 Q Describe for the Court how you were involved.

16 A I led and managed the entire process.

17 Q And as part of your responsibilities, are you
18 familiar with the Debtors' capital structure?

19 A Yes, I am.

20 Q Can you please describe for the Court the
21 Debtors' capital structure?

22 A Yes. Right now, it has a fully drawn \$5-
23 million DIP facility. There's \$3 million of secured
24 debt, with about \$1 million in interest. After that,
25 there's approximately \$3 to \$3.5 million of a

1 combination of accrued and unpaid professional fees and
2 professional fees that will likely be incurred through
3 the end of the case. And then after that, there's
4 anywhere from \$10- to \$12 million of unsecured debt.

5 Q And do you have a view on how much of a
6 recovery it would take for equity to be in the money?

7 A Yes. I believe it would range anywhere from
8 \$22.5- to about \$24.5 million would be required to
9 provide a return for equity.

10 Q And as part of your responsibilities, are you
11 currently familiar with the Debtor's liquidity
12 position?

13 A Yes, I am.

14 Q And how are you familiar with that?

15 A I've reviewed their financial statements. I
16 speak with management. I generally understand their
17 business after working with them for about two years.

18 Q I want to show you what's been marked as
19 Exhibit 1 in the binder in front of you.

20 MR. WINSBERG: And, Your Honor, we placed a
21 binder up at your table, and as well for the law
22 clerk.

23 BY MR. WINSBERG:

24 Q Can you identify tab 1?

25 A Yes. Tab 1 is cash flow projections that were

1 generated by the CFO.

2 Q And can you describe these cash flow
3 projections to the Court?

4 A Yes. This analysis in front of the Court
5 today is a weekly cash flow projection from this week
6 until the end of the year. The cash flow projection is
7 broken down -- and this is just how the Debtor analyzes
8 their business. It's broken down between Prexhi and
9 Dinoking and Dinosaurs on Earth. When I say "Prexhi,"
10 that's Premier Exhibitions. And then there is a
11 consolidated total at the bottom of the two cash flows
12 together.

13 Q And I would direct you towards the end of
14 December, what the ending cash balance is?

15 A Yes. If you look in the bottom right corner
16 of the spreadsheet, you'll see Cash At End is the line
17 in the bottom right-hand corner, says \$442,519.

18 Q Can you explain for the Court the projected
19 cash position at the end of the year based on that
20 number?

21 A Yes. Cash will be at a very low level at the
22 end of the year.

23 Additionally, what happens on January 1st is
24 they have about \$425,000 of rent and lease payments
25 that come due, so essentially at the end of the year

1 they're out of money.

2 Q And do you know whether this spreadsheet, this
3 cash flow projection, includes professional fees?

4 A It does not. This spreadsheet excludes
5 professional fees, including professional fees. And
6 I'm just looking at this week, there are accrued and
7 unpaid professional fees of roughly \$1.8 million. And
8 then the projected cash at the end of this week is
9 \$1.739 million, which would -- you know, if they
10 honored those obligations today, they would be out of
11 money.

12 Q Can you describe for the Court, based upon
13 this spreadsheet, what your view of the Debtors'
14 liquidity position is here today?

15 A Yes. It is stressed and -- I don't know if
16 "stressed" is a strong enough word. Maybe they're in
17 dire condition, especially given the amount of capital
18 expenditures that they have not been able to put into
19 the business.

20 Q Do you know what the average monthly accrual
21 for professional fees has been since January of this
22 year?

23 A It ranges between \$3- and \$400,000 a month.

24 Q And do you know what the current status of the
25 DIP loan is?

1 A Yes. The DIP loan is fully funded. It was
2 recently extended maybe two months ago.

3 Q And do you know what the monthly interest
4 carried for that DIP loan is?

5 A It's about \$55,000 a month.

6 Q Now, at some point Glass Ratner began a sale
7 process; right?

8 A That's correct.

9 Q And how did that come about?

10 A There was what's termed as a Plan Support
11 Agreement. There was a heavily negotiated Plan Support
12 Agreement amongst the two committees and the Debtor.
13 As a part of the Plan Support Agreement, Glass Ratner
14 was engaged to market and sell the -- and have a
15 complete sale of the assets.

16 Q And why did Glass Ratner engage in the sale
17 process with Debtors and the other professionals in
18 this case?

19 A Glass Ratner engaged in the sale process as it
20 was stipulated and agreed upon amongst the committees
21 and the Debtor for Glass Ratner to lead the process, at
22 the same time in conjunction with the committees and
23 their advisors, making sure that they were heavily
24 involved through the process.

25 Q And I'm going to ask you to turn to tab 2 of

1 the exhibit book and ask if you can identify that.

2 A Yes. Tab 2 is the Plan Support Agreement.

3 Q And did you have an understanding of what the
4 Plan Support Agreement provided?

5 A I do.

6 Q And what was is that?

7 A It essentially, from my perspective, from the
8 Glass Ratner perspective, was the plan, the milestones,
9 the timeline to market and sell -- to market and sell
10 for a complete transaction the entire Premier
11 Exhibitions. And Glass Ratner would be engaged along
12 -- again, along with the committees in running that
13 process.

14 Q If you would turn -- at the top it has page
15 numbers, like it says page ____ of 37. If you would
16 turn to page 33 of 37.

17 A Sure.

18 Q You see where it says Means of Implementation?

19 A Yes.

20 Q Is that where the provision is about having a
21 complete sale of the business versus selling it off
22 piecemeal?

23 A That's correct.

24 Q Now, after the Plan Support Agreement was put
25 together, do you know whether a sale strategy was

1 formulated?

2 A Yes. It was formulated by -- with Glass
3 Ratner, the Debtors and the committees.

4 Q Do you know whether a list of potential
5 interested parties was created?

6 A Yes, a list of potential parties was created.
7 This list -- it's very common in a sales process to
8 define targets, the most likely buyers. So Glass
9 Ratner received input from, again, the committees,
10 their advisors, the company, and we looked at this, the
11 buyer list, and bucketed who we felt were the most
12 likely buyers. These were museums, other exhibition
13 companies, media companies, your usual sort of
14 bankruptcy distressed hedge funds that may be
15 interested in an asset like this.

16 I mean, we even went out and looked at gaming
17 companies to see if a gaming company might be
18 interested in some of the IP associated with -- you
19 know, that Premier had.

20 Q And do you know how many parties were on that
21 list when it was finalized?

22 A Yes. 140 parties were reached out to.

23 Q And after you -- Glass Ratner reached out to
24 approximately 140 parties?

25 A That's correct.

1 Q And what happened after they reached out those
2 parties?

3 A So the process, in general terms, in reaching
4 out to these parties, was either through an email or
5 through a phone call.

6 Before embarking on the process, we set up a
7 one-page teaser that was reviewed and approved by the
8 committees and their advisors and the Debtors, and that
9 piece would have gone out in an attachment, in an
10 email, or sent after a phone call, gauging interest
11 levels.

12 After the teaser would be sent and we would
13 receive correspondence that there was, you know,
14 additional interest, we would provide a non-disclosure
15 agreement. After the non-disclosure agreement was
16 signed, we would provide what's called a confidential
17 information memorandum. The confidential information
18 memorandum was reviewed and approved by the committees,
19 their advisors and the Debtor, and that would go out.

20 And, additionally, we set up a data room, and
21 access to the data room would be granted after an NDA
22 was signed.

23 So after the NDA was signed, we were able to
24 provide material, nonpublic information, which we
25 needed to be sensitive to because Premier is a public

1 company and we needed to make sure that we didn't --
2 that we kept a good lid on that.

3 Q Do you know whether Glass Ratner provided the
4 teaser to 140 parties on the list?

5 A Yes.

6 Q And did it?

7 A Yes.

8 Q And how many parties signed non-disclosure
9 agreements?

10 A About 30.

11 Q And do you know whether the confidential
12 information memorandum was provided to those parties?

13 A Yes.

14 Q And was it?

15 A Yes.

16 Q And do you know -- can you describe for the
17 Court how the confidential information memorandum was
18 prepared?

19 A Yes. Again, it was prepared by Glass Ratner,
20 with the help of the Debtors, and reviewed and approved
21 by both committees and their advisors.

22 Q And do you know whether the parties that
23 signed the non-disclosure agreement were provided
24 access to the online data room?

25 A Yes.

1 Q And are you familiar with the online data
2 room?

3 A Yes, I am.

4 Q And how are you familiar?

5 A I've been on it. I helped set it up, engaged
6 the company to set up the data room, and facilitated
7 populating the data room with financial statements,
8 legal information, items for buyers to perform --
9 potential buyers to perform more diligence so that they
10 would be able to provide an expression of interest, an
11 educated expression of interest.

12 Q And do you know whether the online data room
13 was supplemented from time to time?

14 A Yes, it was.

15 Q And in connection with the Plan Support
16 Agreement, do you know whether there was a deadline for
17 parties to submit indications of interest?

18 A Yes.

19 Q And what was that deadline?

20 A I believe it was late July.

21 Q Of 2017?

22 A Of 2017, yes.

23 Q And do you know whether the Debtors received
24 any timely indications of interest?

25 A Yes. We received, I would say, around five.

1 Q Do you recall the financial terms of those
2 indications of interest?

3 A Yes. There were three that ranged from \$5- to
4 \$10 million. There was an offer from -- an indication
5 of interest from PacBridge that ranged from \$50- to \$65
6 million. And then there was a very complicated,
7 reverse triangular merger that was extremely difficult
8 to value, and it was -- everybody's guess was as good
9 as mine as to what that true value was.

10 Q And after you received those indications of
11 interest, what happened next?

12 A We continued to negotiate with the parties.
13 Glass Ratner continued to pound the pavement to try to
14 get some more interest in the sale.

15 Eventually, in October, the company received a
16 term sheet from PacBridge in the amount of \$30 million.
17 I think the implied value was something around
18 \$40 million provided a recovery to the equity -- to the
19 equity holders.

20 Q And do you know what happened to that term
21 sheet?

22 A Yes. That term sheet was rescinded after
23 there were allegations from --

24 MR. GURFEIN: Objection, Your Honor.

25 THE WITNESS: -- the Equity Committee.

1 MR. GURFEIN: The witness is testifying as to
2 the intent of a third party with respect to a
3 submission to the Debtor. This is not the witness'
4 testimony.

5 MR. WINSBERG: I'm just asking for his
6 understanding, Your Honor, putting it into context.
7 I can ask him what the basis of his knowledge for
8 that is.

9 THE COURT: You can do that.

10 BY MR. WINSBERG:

11 Q What's the basis for your knowledge of that?

12 A I don't think I finished.

13 Q Of your knowledge of the PacBridge rescinding
14 its offer.

15 A My knowledge of PacBridge rescinding the offer
16 was the Equity Committee made allegations of insider
17 dealings, and then they rescinded the offer.

18 Q And did you have any discussions with
19 PacBridge about why they rescinded the offer?

20 A Yes. They said they did not -- they were
21 concerned about any bad press that they may receive
22 regarding this and were not interested in lengthy
23 litigation.

24 Q And do you know whether the Equity allegations
25 were founded or unfounded?

1 MR. GURFEIN: Objection, Your Honor.

2 MR. WINSBERG: I'm not asking a leading
3 question, just asking whether he knows whether the
4 Equity Committee allegations, which he testified he
5 has personal knowledge of --

6 MR. GURFEIN: Your Honor, there's nothing in
7 the record as to what the allegations were.

8 MR. WINSBERG: I can ask him the question. I
9 can ask him what his knowledge is of what the
10 allegations --

11 THE COURT: You can ask him what his knowledge
12 is about that.

13 BY MR. WINSBERG:

14 Q What's your knowledge of the Equity
15 Committee's allegations as to the PacBridge term sheet?

16 A They were accusing the company of insider
17 dealings.

18 Q And do you know whether those allegations were
19 founded or unfounded?

20 A They were unfounded.

21 Q And how do you know that?

22 A Mr. Cavender ran an internal investigation
23 with the company.

24 Additionally, my personal knowledge of the
25 marketing process and conversations with the potential

1 buyer and the company indicated none of those actions
2 existed.

3 MR. GURFEIN: Your Honor, I would move to
4 strike the testimony of Mr. Cavender through the
5 mouth of Mr. Glade.

6 MR. WINSBERG: I was asking what his
7 understanding was of the basis for whether they
8 were founded or unfounded, which he already
9 testified he had knowledge, personal knowledge, of
10 the allegations that were made and personal
11 knowledge, because he testified he was personally
12 involved with whether those allegations of insider
13 dealings were true or false.

14 THE COURT: I will take it as his
15 understanding and not as anyone else's intention.

16 MR. WINSBERG: Thank you.

17 BY MR. WINSBERG:

18 Q Now, after that happened -- in connection with
19 the sale process -- that was in October of 2017?

20 A That's correct.

21 Q And in connection with the sale process, what
22 happened next?

23 A After the term sheet was rescinded, we
24 continued to pound the pavement, tried to find buyers,
25 started negotiating with whoever we could to have a

1 transaction occur, up to, you know, we had a mediation
2 at the end of February where all the parties got
3 together in Atlanta.

4 And then shortly after the mediation, we
5 received a term sheet from the stalking horse bidder
6 group.

7 Q And do you recall when you received that term
8 sheet from the stalking horse group?

9 A Yes. It was early March.

10 Q Of 2018?

11 A Of 2018.

12 Q And do you recall what the terms of that term
13 sheet were?

14 A The initial term sheet provided a purchase
15 price of \$15.5 million. There was no deposit. There
16 was no cap on the expense reimbursements for inside the
17 bid procedures. The expense -- everything was a little
18 bit higher. There was an exclusivity provision.

19 Q And after you received that term sheet, what
20 did you do?

21 A We immediately sent it to the committees and
22 to management, discussed it, and responded probably
23 within 24 or 48 hours with a redline of the term sheet.

24 Q And do you recall the negotiations around the
25 term sheet?

1 A Yes, yes, yes.

2 Q And what do you recall about those
3 discussions?

4 A They were -- it was a hard negotiation. You
5 know, it was -- as all of the negotiations with the
6 stalking horse group have been, they were about par for
7 the course.

8 Q And do you recall discussions around the
9 purchase price?

10 A Yes. We told them right away at 15.5 -- that
11 we were not going to be able to proceed at \$15.5
12 million level. Eventually they were able to come up.

13 Q And do you recall discussions around the bid
14 procedures?

15 A Yes. We immediately wrote back: We need a
16 cap. We need to make sure that we have a lively
17 auction, and that there's no actions that are taken,
18 you know, or agreed to that would create a dynamic
19 where an auction would not be successful based on the
20 bid procedures. So there was significant back and
21 forth on that.

22 There was significant back and forth on the
23 exclusivity provision. They were not wanting to us
24 speak with anybody else within the process.

25 We were able to adjust that so we could, if

1 there was an interested party, they could go into the
2 data room, have access to management, but we were not
3 able to negotiate a transaction. But it didn't prevent
4 any other parties from coming in and doing their work.

5 Q And do you know whether these discussions led
6 to a revised term sheet from the stalking horse group?

7 A Yes, they did.

8 Q And if I could ask you to turn to tab 3 of the
9 exhibit book and ask if you can identify that.

10 A Yes. This is the executed term sheet.

11 Q And what does this term sheet reflect?

12 A This term sheet reflects a lot of negotiation
13 between the parties: a purchase price of \$17.5 million
14 with a 10 percent deposit; identifies the stalking
15 horse purchasers; shows the bid procedures where there
16 is a cap on expense reimbursements; the break-up fee;
17 shows sort of the increments that we're looking at for
18 the auction; provides for milestones; and has the
19 exclusivity provision, which I think --

20 Q Did you have an understanding of the stalking
21 horse's interest in moving forward with the transaction
22 without bid protections?

23 A Yes. They would not move forward without bid
24 protection.

25 Q And do you know whether this term sheet

1 reflected in Exhibit 3 was presented to the Debtor's
2 board of directors?

3 A That's correct, it was presented to the board.

4 Q Did you have a view on that term sheet at that
5 time?

6 A Yes.

7 Q And what was that?

8 A I thought that the board should approve
9 signing the term sheet.

10 Q And why was that?

11 A We, at this point in the process, had been
12 marketing these assets for sale for nine months, and
13 this was the most legitimate -- highest and most
14 legitimate offer received by the company.

15 Q And do you know what the board initially
16 decided?

17 A The board initially decided, against the
18 advice of the advisors, to not approve the term sheet.

19 There was another potential bidder, Loongs, at
20 a, I think \$50 million, \$60 million price, and they,
21 the board, asked the company and its advisors to
22 continue to diligence Loongs as a potential buyer.

23 Q Were there any other potential buyers the
24 Debtors were diligencing as well?

25 A Yes.

1 Q And who were those?

2 A I believe the museum was starting to become
3 more involved during that time. We were still talking
4 with the reverse triangular merger folks. We were
5 still trying to get a deal.

6 Q And what happened next?

7 A Eventually this Loongs company kind of went
8 away. They stopped responding to emails and they were
9 unable to provide any information regarding their
10 wherewithal. They disappeared, essentially.

11 So at that point, in my mind, there wasn't
12 another viable deal.

13 We went back to stalking horse bidder group,
14 asked them if they were still interested, and
15 thankfully they were.

16 Q Do you know whether the stalking horse
17 agreement was brought back to the board?

18 A Yes, the stalking horse agreement was brought
19 back to the board after diligencing.

20 Q And do you recall when this term sheet was
21 brought back to the board?

22 A Yes. It was May 2018.

23 Q And do you know when -- do you know whether
24 the board approved?

25 A Yes. The board eventually approved proceeding

1 with this term sheet.

2 Q When the board approved this term sheet in
3 Exhibit 3, did you have a view of the proposal?

4 A Yes.

5 Q And what was your view?

6 A I thought that the company should sign the
7 term sheet and proceed.

8 Q Did you share that view with the board?

9 A Yes.

10 Q And after the board approved this term sheet
11 in May 2018, what happened next?

12 A We began the process of negotiating the APA
13 with the stalking horse bidder group.

14 Q And were you personally involved in those
15 negotiations?

16 A Unfortunately, yes.

17 Q How would you describe the negotiations with
18 the stalking horse group?

19 A Lively, time consuming, intense.

20 Q And --

21 A It was a free-for-all. If you were breathing,
22 you had time to have a call with someone, so it didn't
23 matter time of day, weekend, weekday. It was -- it was
24 live.

25 Q Do you recall what provisions of the Asset

1 Purchase Agreement were heavily negotiated?

2 A I would say, in my opinion, it was probably
3 every provision. But, you know, the main provisions
4 were surrounding the treatment of Dinoking, which was a
5 non-debtor entity, that took a significant amount of
6 time; the exclusivity provisions; the bid procedures;
7 the proof of funds. I mean, you name it and it was
8 negotiated. And diligence, the diligence requirements.
9 I mean, it was -- it was -- it was fun.

10 Q Based upon your involvement in the
11 negotiations, do you know whether the negotiations over
12 the Asset Purchase Agreement were done at arm's length?

13 A Most certainly.

14 Q I'm going to ask you to identify -- turn to
15 Exhibit 4 and ask you to identify this?

16 A Yes. This is the Asset Purchase Agreement
17 that was agreed to between Premier and the stalking
18 horse bidder group.

19 Q Do you recall when it was entered into?

20 A Yes. It was entered into in June of 2018.

21 Q And can you generally describe for the Court
22 the features of the stalking horse agreement?

23 A Yes. It's a purchase price -- this one, it's
24 going to change --

25 Q You can go ahead and --

1 A It's going to change to 19.5, but this
2 agreement says 17.5. So it has a purchase price of
3 \$17.5 million, defines the bid procedures that would be
4 required for an auction, goes through your typical
5 purchase price closing adjustments, goes through where
6 the deposit is, which assets. I mean, it's a lengthy
7 document.

8 Q Do you know whether this stalking horse group
9 provided a deposit?

10 A Yes, they did.

11 Q And do you know whether the equity holders in
12 the stalking horse group provided commitment letters to
13 fund the vehicle?

14 A Yes.

15 Q Do you believe the Asset Purchase Agreement
16 reflected in Exhibit 4 benefits the Debtors?

17 A Yes.

18 Q And how so?

19 A It provides the Debtors -- it's actually for a
20 couple of reasons. I think that it does provide the
21 Debtors an opportunity to continue as a going concern.
22 As part of continuing as a going concern, they can
23 continue to be good stewards for these artifacts that
24 are a part of the sale, and it is the highest and most
25 legitimate offer on the table.

1 Additionally, it provides for an auction. If
2 there is anybody out there that has more money, we are
3 happy to -- and assuming they can become a bidder -- to
4 include them in the process.

5 So not only do you have sort of the market
6 test of what Glass Ratner did, you have a market test
7 from an auction.

8 Q Do you have a view as to the best option for
9 the Debtors in this case going forward?

10 A Yes, proceed with this transaction.

11 Q Do you believe this stalking horse transaction
12 is superior to any other current option available to
13 the Debtors?

14 A Definitely.

15 Q And why do you say that?

16 A It's a legitimate offer. There's real money.
17 They've put up a deposit. They have shown an ability
18 to actually -- they've increased. They started off at
19 15.5 and today they're at 19.5. I think they've shown
20 an unbelievable commitment to continuing the life of
21 this company.

22 Q Do you know whether the stalking horse
23 agreement reflected in Exhibit 4 was presented to the
24 Debtors' board of directors?

25 A Yes, it was.

1 Q And do you recall when that was?

2 A Yes. It was in June.

3 Q Do you know what the board of directors did
4 with respect to the agreement?

5 A Yes. They approved the agreement. And I just
6 want to be clear and clarify.

7 Daoping, who was on the board, for approval of
8 the term sheet and approval of the Asset Purchase
9 Agreement, he was excluded from the vote and excluded
10 from conversation amongst the board and the advisors.
11 And then he came in and provided support for the deal
12 after we were able to have discussions with the board
13 without Daoping.

14 Q I'm going to ask you to turn to Exhibit 5 and
15 ask you if you can identify this.

16 A Exhibit 5 will be the competitive bidding sale
17 procedures. Our bid procedures, essentially.

18 Q And are these the bid procedures that were
19 attached to the Asset Purchase Agreement subject to the
20 redline behind it?

21 A That's correct.

22 Q Now, you heard earlier today the statement in
23 open court with the resolution to increase the stalking
24 horse purchaser's bid; correct?

25 A That's correct.

1 Q And the stalking horse now has -- we've asked
2 for a new deadline and timeline for the sale process.

3 A Yes.

4 Q Do you believe that sale process is
5 appropriate in this circumstance?

6 A Definitely.

7 Q And why do you believe that?

8 A I believe that this asset has been marketed to
9 such a great degree over the past 12 months that
10 everybody has had an opportunity to do this.

11 Additionally, I think with the liquidity
12 issues and -- you know, the real component of this
13 which sometimes is overlooked, especially from my
14 perspective coming from a financial perspective, is the
15 company and the shape that the company is in from a
16 morale component, from keeping personnel on, that
17 having this process in an efficient manner will allow
18 for any competitive bidding that would be out there and
19 allow really some relief for the company.

20 Q And are you familiar with the break fee and
21 expense reimbursement as we have modified in open court
22 today?

23 A Yes.

24 Q Has Glass Ratner researched the market data in
25 relation to the proposed break-up fee and expense

1 reimbursement?

2 A Yes.

3 Q In preparing that analysis, what observations
4 do you have?

5 A I think that, overall, are they a little bit
6 aggressive? Maybe. But, you know, this is a
7 complicated case, with the Admiralty Court involved and
8 those components of it. Not only is it bankruptcy,
9 which adds an unbelievable component of complexity from
10 a typical M&A deal, you know.

11 And, additionally, Jennifer Feldsher provided,
12 I think, and documented to the Court showing how much
13 in fees they've incurred on negotiating this
14 transaction. And based on our back and forth on the
15 APA, I mean, it seems like they definitely earned it.
16 But the expenses are definitely -- have been incurred.

17 So it's not like a windfall. It's not like
18 anybody's making money off of these procedures and the
19 break-up fee.

20 Q So you believe the break-up fee and expense
21 reimbursement as provided are appropriate in this case?

22 A That's correct.

23 Q Do you know whether these bid procedures will
24 chill bidding?

25 A Most certainly not. In fact, I believe the

1 harm, the chilling, has actually been done at this
2 point really by the Equity Committee's plan and
3 disclosure statement.

4 Any potential buyers would not want to put
5 time and money into a case that doesn't have specific
6 direction, and the -- having -- you know, you just
7 wouldn't put your time and money into this if you
8 didn't know it could go into a direction that would
9 allow for a purchase through an auction.

10 So, I mean, these are the conversations we've
11 had -- the Glass Ratner team has had with the potential
12 buyers.

13 Q Since the Asset Purchase Agreement was filed
14 with the Court, can you describe for the Court whether
15 you've received other inquiries of interest for the
16 Debtors' assets?

17 A Yes. Yes, we received other inquiries in that
18 time frame.

19 Q And do you know what happened to those
20 inquiries?

21 A Yeah. I mean, they stalled out. We couldn't
22 provide -- the only updates we could provide was that
23 there's three options. We don't know which one it's
24 going to be.

25 Q Do you believe more time would benefit this

1 process?

2 A I think it would harm the process.

3 Q And are you also familiar with the other terms
4 of the bid procedures, including the qualified bid
5 requirements and auction rules?

6 A Yes.

7 Q And do you believe those bid procedures are
8 appropriate in the case?

9 A Oh, especially in this case.

10 Q Do you believe it's appropriate for the
11 Debtors to require a non-refundable deposit as part of
12 this bid auction process?

13 A Yes.

14 Q And why do you believe that?

15 A The case up to this point, outside of the
16 stalking horse bidder, has been an exercise, in my
17 opinion, in theory. No one has come to the table with
18 actual dollars, and that's what I'm interested in. And
19 I think that that's what the Debtor needs, is actual
20 money. And they are the only ones that have brought
21 the actual dollars -- the stalking horse bidder are the
22 only ones that have brought the actual dollars to the
23 table.

24 And we have to figure out -- this is -- this
25 is the only way that I can think of that provides for

1 someone to put real money into this.

2 And it wouldn't be fair to have the stalking
3 horse bidder, who now has had their money locked up in
4 a deposit for quite some time now, and somebody else
5 comes to the table and they can just come in and say --
6 I just don't think that that would be fair.

7 Q Do you believe it's appropriate for the
8 Debtors to require financial wherewithal of the
9 purchaser to participate in the auction process?

10 A Yes.

11 Q And why do you believe that?

12 A You have to have dollars at the end of the
13 day. And anybody can come in and say I'm going to --
14 you know, if you're selling a house, you can walk in
15 the house and you can say: Yeah, I want to buy this
16 house for a million dollars. But if you don't have the
17 million dollars, what's it worth? It's not worth
18 anything.

19 So you need dollars in this case.

20 Q Now, are you familiar with the exclusivity
21 provision in the bid procedures and in the stalking
22 horse agreement?

23 A Yes.

24 Q Can you describe that provision for the Court?

25 A The exclusivity provision, from signing of the

1 APA to the bid procedures being approved by the Court,
2 prevents the Debtor and its advisors from negotiating a
3 transaction with a third party.

4 However -- and it's important, this is very
5 important -- it does not prevent a party from coming in
6 to diligence the company, even up to management visits.

7 If somebody was interested, you can get a long
8 way on a letter of intent or an understanding of the
9 company through data in the data room, further
10 requests, and meetings with management.

11 Q Do you know whether doing due diligence --
12 have the Debtors provided due diligence since the
13 execution of the purchase agreement to other interested
14 parties?

15 A Yes.

16 Q And have they?

17 A Yes.

18 Q And do you know who those parties are they
19 provided diligence to?

20 A Yes.

21 Q And who are they?

22 A Pentwater, Parquet Capital, to name two of
23 them. And the museum. But the museum had signed an
24 NDA a year before, and they have had access to the data
25 room for a long time and have been able to -- and had a

1 site visit actually, too. And I think the site visit
2 was in that time frame. I can't recall the exact date
3 of the site visit, but I think it was after the APA.

4 Q Do you know what the exclusivity provision
5 provides after this Court should enter the bid
6 procedures order?

7 A Yeah. It allows the company to go back out
8 and solicit potential buyers and try to drive an
9 auction.

10 Q And do you know whether the exclusivity
11 provision has chilled bidding in this case?

12 A Oh, it has not.

13 Q And why do you believe that?

14 A No one -- no party has come to me yet that had
15 an issue with it. I would say -- let me clarify: Not
16 no party, but no potential buyer has come to me with an
17 issue.

18 Q And just to clarify, do you know whether the
19 bid procedures, which we have excerpted from the Asset
20 Purchase Agreement and from the term sheet, were
21 approved by the board of director?

22 A Were they approved? Yes.

23 Q And were they?

24 A Yes.

25 Q Now, are you aware that disclosure statements

1 have been filed by both the Equity Committee and the
2 Creditors Committee?

3 A Yes.

4 Q Are you generally familiar with them?

5 A Yes.

6 Q Do you have a view on whether the approval of
7 either or both of the disclosure statements will have
8 an impact on the Debtors' sale process?

9 A Yes, it would. A negative impact, but an
10 impact nonetheless.

11 Q Do you have a view of what will happened to
12 these cases if the Debtors are not able to move forward
13 with the sale process on the time frame we've proposed
14 in open court today?

15 A Yes. I think that it's really -- they're
16 really struggling to keep momentum, to continue to
17 market, continue to drive sales. They can't book new
18 venues because it's unclear as to the direction it's
19 going, and they absolutely have to have that direction.

20 Q Has Glass Ratner done an analysis of recovery
21 for unsecured creditors in connection with the increase
22 in the stalking horse purchase announced in open court?

23 A Yes.

24 Q And what does that analysis reflect?

25 A Reflects a potential 80 percent recovery for

1 the unsecured creditors.

2 Q Are you aware of any better result that's
3 currently in front of this Court?

4 A No.

5 Q Do you believe the Equity Committee disclosure
6 statement and plan is a superior for these Debtors in
7 this case?

8 A No.

9 Q And why do you believe that?

10 A Well, there's no money there. First off,
11 there's no money in it to pay creditors right now.

12 Additionally, the litigation that would ensue
13 around that transaction, to me, pretty much makes it
14 impossible to effect in a time frame that would keep
15 the company running. The company would not run, in my
16 opinion, if that was the path that was chosen, and
17 that's really just from a financial perspective.

18 It's my understanding, just from conversations
19 with counsel, that there are other issues associated
20 with disclosure.

21 A bad attorney -- I'm not an attorney. If I
22 was one, I'd be a bad one.

23 But I think that there's nothing there.
24 There's no dollars there. I live in a world of money,
25 I don't live in a world of not real money.

1 Q And as to the disclosure statement that was
2 presented today by the Creditors Committee, do you have
3 a view of whether it's superior or not to the
4 Debtors --

5 A I mean, just on the surface, it's \$19.2
6 million. This is \$19.5 million. Obviously, that's
7 higher.

8 Not to mention, I have yet to see \$19.2
9 million from the museum as a -- we've been in
10 discussions with the museum for a very long time now
11 and have asked them -- I can't tell you -- I mean,
12 we've probably been talking to them for over six months
13 and have reiterated: Can you show us any money? And
14 they have yet to show us cash.

15 Additionally, I think that the process, as
16 it's outlined with an auction, does its work. It
17 provides the information, the data, that everybody
18 needs to say that this was fair, and the plan filed by
19 the Creditors Committee didn't allow for that to
20 happen.

21 MR. WINSBERG: May have one minute, Your
22 Honor?

23 (Counsel conferring.)

24 MR. WINSBERG: Your Honor, at this time I'd
25 like to move Exhibits 1, 2, 3, 4 and 5 into

1 evidence.

2 THE COURT: Any objections?

3 MR. GURFEIN: No objection.

4 MR. BROWN: No objection.

5 THE COURT: No objections? Exhibits 1 through
6 5 are admitted.

7 (Debtors' Exhibits 1, 2, 3, 4 and 5 were
8 received in evidence.)

9 MR. WINSBERG: I have no further questions at
10 this time.

11 THE COURT: Thank you.

12 MR. WINSBERG: Thank you, Your Honor.

13 MR. GURFEIN: May I have just a moment, Your
14 Honor?

15 THE COURT: Certainly, Mr. Gurfein.

16 CROSS-EXAMINATION

17 BY MR. GURFEIN:

18 Q Mr. Glade, Peter Gurfein for the Equity
19 Committee.

20 A Good afternoon.

21 Q Let me start by directing you to Exhibit 1
22 this afternoon. I just want to ask if I'm reading this
23 correctly.

24 If you look at the second to the bottom line
25 where it says Cash At Start, the numbers in that row

1 are the cash in hand at the start of that particular
2 week on this schedule?

3 A I believe so, yes.

4 Q And then after expenses for the week, it shows
5 Cash At End. That's after -- that's deducted from the
6 cash you start with that week.

7 A Uh-huh.

8 Q So if you look at November 2nd, 2018, your
9 projected Cash At Start is \$1,055,667.

10 A Okay.

11 Q Is that correct?

12 A Yes.

13 Q And at the end of that week, the company would
14 have \$729,504.

15 A \$729,604 on my version.

16 Q I misread that. \$729,604; correct?

17 A That is correct.

18 Q The three sales that you were involved in,
19 were those bankruptcy sales?

20 A No.

21 Q What kind of sales were those?

22 A One was a distressed business. Two of the
23 others were in -- one was a distressed business, one
24 was a corporate carveout, and the other was slightly
25 distressed.

1 Q And what industry were these companies in?

2 A One was plumbing/heating/air conditioning,
3 another was transportation, and the other was
4 chemicals.

5 Q So it'd be fair to say that this transaction
6 is the first bankruptcy sale that you've led in your
7 career.

8 A That's correct.

9 Q When you opine on the effect of bid
10 protections on the sale, that's not based on your
11 experience in your prior sales, is it?

12 A That's correct. It was based on research.

13 Q Thank you.

14 You mentioned the term sheet received by the
15 Debtors from -- did you describe them as the PacBridge
16 group or from PacBridge in October 2017?

17 A That's correct.

18 Q And did that term sheet provide for equity to
19 be provided to Daoping Bao, equity in the purchaser?

20 A I'd have to look at the term sheet.

21 Q Do you have it with you?

22 A I don't have it with me.

23 Q I'll represent to you --

24 MR. GURFEIN: And that, Your Honor, is an
25 exhibit --

1 MR. WINSBERG: I'm going to object. This is
2 an evidentiary hearing. There's no more
3 representations.

4 This case -- we've heard, in the four months
5 since I've been in it, people talking and
6 representing to the Court. This is evidence now.

7 MR. GURFEIN: Your Honor --

8 MR. WINSBERG: If he has it, he can show it to
9 him, but I object.

10 MR. GURFEIN: -- the exhibit I'm referring to
11 is attached as an exhibit to the motion of the
12 Creditors Committee for a status conference. That
13 was the hearing that was held on July 25th, and the
14 October 9, 2017 term sheet is attached to that as
15 an exhibit.

16 Unfortunately, I wasn't aware of Mr. Glade's
17 testimony today and did not bring that with me, but
18 it is part of the Court's docket.

19 THE COURT: All right, you may refer to it.

20 MR. GURFEIN: And I ask the Court to take
21 judicial notice of that exhibit.

22 MR. WINSBERG: No objection. It is what it
23 is.

24 THE COURT: Very good.

25 BY MR. GURFEIN:

1 Q You mentioned that Daoping Bao did not
2 participate in the decision of the board with respect
3 to the current transaction; is that correct?

4 A He was asked to be excused from voting from
5 the board.

6 Q And who asked him to be excused from voting on
7 the board?

8 A He was advised by -- I believe he was advised
9 by counsel as to make sure that there was no appearance
10 of impropriety.

11 Q Are you familiar with the Georgia state law on
12 transactions involving interested board members?

13 A I'm not an attorney.

14 Q I'll take that as a no.

15 A That's correct. No, I'm not.

16 Q You referred to five proposals or offers that
17 were received in July 2017?

18 A Uh-huh.

19 Q Is that correct?

20 A Yes, about five.

21 Q There were three, you said, in the \$5- to \$10
22 million range?

23 A I think so.

24 Q One in the \$50- to \$65 million range?

25 A Correct.

1 Q And then there was reverse merger where the
2 terms were not fully spelled out, but they were rather
3 complicated? Do I have that correct?

4 A No. I mean, the terms were spelled out, but
5 as far as from a valuation perspective, we were -- you
6 know, it was -- it was -- unable to figure out what the
7 value was.

8 Q You mentioned several times that the
9 committees and the Debtor worked jointly on these
10 transactions or on this sale process; is that correct?

11 A That is correct.

12 Q And did you provide a copy of each of these
13 term sheets to the committees upon receipt?

14 A Yes. There was one that you brought up in the
15 deposition that was not shared. But the one that you
16 brought up in the deposition had no financial terms
17 associated with it.

18 Q I could not hear that.

19 A The one that you brought up in the deposition
20 that was not provided to you was -- had no financial
21 terms associated with it.

22 Additionally, I believe you and the financial
23 advisor to the committees were made aware that a term
24 sheet was received that contained no financial terms,
25 and we were asked not to provide that to the

1 committees.

2 Q By whom were you asked not to provide that to
3 the Equity Committee?

4 A By the folks who had the -- who wrote the term
5 sheet.

6 Q And who wrote the term sheet?

7 A Alta and Apollo.

8 Q Alta and Apollo. So Alta and Apollo directed
9 the Debtor not to provide this term sheet to the Equity
10 Committee.

11 A Directed a term sheet with no financial terms.

12 Q We heard you the first time.

13 A I just wanted to clarify.

14 Q The Equity Committee was not provided with
15 this term sheet.

16 A That had no financial terms --

17 Q Mr. Glade, that's a yes-or-no question.

18 A That's correct. Although, I do think
19 eventually you were provided it, if my memory serves me
20 correct.

21 MR. GURFEIN: Your Honor, I do have with me
22 the term sheet to which we're referring that was
23 marked at Mr. Glade's examination that I'd like to
24 have marked as an exhibit at this hearing.

25 Unfortunately, I only have one copy with me.

1 What would you like me to do? I'm at your --

2 THE COURT: Objection?

3 MR. WINSBERG: I'd like to look at it first
4 just to confirm that it was -- and if it's what we
5 think it is, I have no objection with him just
6 sharing it with the witness. It's not ideal, Your
7 Honor, but we're trying to get through this
8 hearing.

9 MR. GURFEIN: I stand corrected, Your Honor.
10 It appears Mr. Brown's office is more efficient
11 than I thought. I do have copies of that with me,
12 and I would ask if I may approach --

13 THE COURT: Certainly, please.

14 MR. GURFEIN: -- and I ask this be marked.
15 Should we make this A, Your Honor?

16 THE COURT: All right.

17 MR. GURFEIN: May I approach the witness, Your
18 Honor?

19 THE COURT: Certainly.

20 (Mr. Gurfein hands document to witness.)

21 THE WITNESS: Thank you. (Examining
22 document.) Excuse me, Mr. Gurfein. What is this
23 document supposed to be?

24 MR. WINSBERG: This is, I believe, the
25 initial --

1 MR. GURFEIN: I may have to take back what I
2 said about Mr. Brown's office.

3 MR. WINSBERG: This is not what --

4 THE WITNESS: This is not the document that
5 has the term sheet that he's referring to.

6 MR. GURFEIN: Apologies, Your Honor.

7 (Mr. Gurfein hands document to witness.)

8 THE WITNESS: Thank you.

9 BY MR. GURFEIN:

10 Q Mr. Glade, is that the term sheet you're
11 referring to as provided by Alta and Apollo in about
12 January 2018?

13 A That's correct.

14 Q I direct your attention to the bottom of page
15 3 of that term sheet.

16 A Okay.

17 Q Forgive me. The top of page 3 first, where it
18 says "Plan Sponsors"?

19 A Yes.

20 Q I ask you to read along. It says, "The
21 members of the ad hoc group of equity holders" -- do
22 you understand that to be Apollo and Alta?

23 A They were referred to as the ad hoc group of
24 equity holders in their filings with the Court.

25 Q Apollo and Alta were.

1 A Yes.

2 Q -- "and related third parties and certain
3 other equity holders." Do you see that?

4 A Yes.

5 Q Did I read that correctly?

6 A Yes.

7 Q And it looks like there's a footnote
8 referencing to the bottom?

9 A Uh-huh.

10 Q And read along with me. It says, "In the
11 event insider affiliated equity holders are interested
12 in participating as plan sponsors, the percentage of
13 ownership will be TBD" -- and what do you understand
14 that to mean?

15 A To be determined.

16 Q -- "but will be based on a capital
17 contribution from each party that is mutually
18 agreeable." Did that I read that correctly?

19 A Yes.

20 Q So this term sheet refers to a potential
21 transaction involving insider affiliated equity
22 holders; is that correct?

23 A That's what the document says as you read it.

24 Q And subsequent to receipt of this term sheet,
25 did you have occasion to put Alta and Apollo in touch

1 with any insider affiliated equity holders?

2 A Yes.

3 Q And who was that?

4 A Alta and Apollo, as a part of their
5 diligencing of the engagement, were interested in
6 calling and discussing with many of the parties of this
7 engagement and understanding what their positions were.
8 I believe they spoke with the Creditors Committee, I
9 believe they spoke with you, and I had them -- and they
10 were in touch with PacBridge.

11 Q Let me rephrase the question. You seem to be
12 having problems.

13 Did you have occasion to put Alta and Apollo
14 in communication with any insider affiliated equity
15 holders?

16 MR. WINSBERG: I'm going to object, Your
17 Honor. This has been asked and answered. And
18 that's a legal term of art.

19 If he has a question, a layman's question for
20 him, he can ask it, but I don't even know what he
21 means by affiliated insider parties.

22 BY MR. GURFEIN:

23 Q Who do you understand to be insider affiliated
24 equity holders?

25 A I would assume shareholders.

1 Q Which shareholders?

2 A All shareholders.

3 Q All shareholders are, in your mind, insider
4 affiliated equity holders?

5 A They're insider equity holders. I mean --

6 Q Well, what's your understanding of an insider?

7 A Give me what the definition is and then I can
8 provide an answer.

9 Q Tell me what you understand "insider
10 affiliated" to mean.

11 A I have no idea. I don't know what it meant.

12 Q As a result of --

13 A I didn't --

14 Q Excuse me. As a result of reading this, did
15 you have occasion to put Alta and Apollo in touch with
16 PacBridge?

17 A Alta and Apollo, as a part of their diligence,
18 were -- reached out to many of the parties that were
19 involved. I had them -- they -- they reached out to
20 PacBridge. I was -- gave them the phone number.

21 Q You gave whom the phone number?

22 A Alta.

23 Q Whose phone number did you give to Alta?

24 A Giovanni Wong.

25 Q And who is Giovanni Wong?

1 A A PacBridge representative.

2 Q A PacBridge representative.

3 A That's correct.

4 Q And you say you gave that to Gilbert Li?

5 A Correct.

6 Q Who is a representative of Alta.

7 A That's correct.

8 Q So you gave the phone number of PacBridge to
9 the representative of Alta.

10 A That's what -- yes.

11 Q And why did you do that?

12 A Again, as a part of their diligence, they were
13 speaking with all the stakeholders. And Giovanni Wong,
14 as a representative of PacBridge, was a stakeholder,
15 has a significant equity interest, is a secured lender,
16 an unsecured creditor, and a major stockholder.

17 Q And in putting them together, was it with the
18 intention that they make a joint offer for the company?

19 A I was putting them together -- their intention
20 was to make an offer for the company, so it was no
21 different than getting with and speaking with the
22 Creditors Committee, or you, for example. If they
23 thought there was a deal with you, they would have
24 partnered with you.

25 Q Let me see if I can get an answer this way:

1 Was it your intention, your intention, in putting
2 Giovanni Wong and Gilbert Li together, that they and
3 their representative groups make a joint offer for the
4 company?

5 A It was my intention that a transaction occur,
6 yes.

7 Q Do you recall being deposed last Friday,
8 August 24?

9 A That's correct.

10 Q And do you recall being asked this question
11 and giving this answer:

12 Question: "Please let me finish the question.
13 Was it your intention, in putting Giovanni Wong and
14 Gilbert Li together, that they and their representative
15 groups make a joint offer for the company?

16 Answer: "Yes."

17 Do you recall giving that --

18 A Yes.

19 Q That's your testimony.

20 A Yes.

21 Q And that's your testimony today as well.

22 A That's what I said.

23 Q At the time that you did so, you had received
24 a term sheet from Alta and Apollo, the term sheet I
25 showed you that's marked here as Exhibit A; is that

1 correct?

2 A That's correct.

3 Q And you also had received term sheets from
4 PacBridge in the past; is that correct?

5 A That's correct.

6 Q And both PacBridge and Alta and Alta were,
7 respectively, potential purchasers of the company.

8 A At that point, PacBridge was not a potential
9 purchaser of the company.

10 Q What makes you say that?

11 A They had walked away from the deal.

12 Q And --

13 A They had not indicated to me prior to that
14 that they were interested.

15 Q Were you still tracking them, though, as
16 potential purchasers?

17 A I tracked as many people as I could to be
18 potential purchasers.

19 Q When did you first see Alta and Apollo as a
20 potential purchaser?

21 A Well, I think they kind of raised an objection
22 in December, I believe. Then we engaged in
23 conversations. Actually, let me rewind.

24 Alta and Apollo actually reached out in the
25 summer of '17, and they were equity holders, too, and

1 they would need to restrict trading the stock. And
2 they weren't -- didn't want to restrict trading the
3 stock, so they didn't sign the non-disclosure
4 agreement.

5 And then I think in December they filed a
6 non-disclosure agreement.

7 I want to say in the first or second week of
8 January, we had a management call. We had a follow-up
9 management call.

10 Eventually they made their way down for a site
11 visit. Management made their way up to Apollo's office
12 for a site visit.

13 So, in that time frame, they were considered a
14 potential buyer.

15 MR. GURFEIN: Your Honor, we have another
16 exhibit from Mr. Glade's deposition that I ask be
17 marked as Exhibit B for the Equity Committee. May
18 I approach?

19 THE COURT: Yes.

20 MR. GURFEIN: And the witness as well?

21 THE COURT: Yes.

22 (Mr. Gurfein hands document to the Court and
23 the witness.)

24 BY MR. GURFEIN:

25 Q Now, if I recall correctly, on Friday you

1 testified that this was a tracking sheet; is that
2 correct?

3 A What I explained in the deposition on Friday
4 was that this was a summary of a much larger tracking
5 sheet file that was provided to your financial advisor
6 on a weekly basis.

7 Q And directing your attention to Exhibit B,
8 there's a heading Company/Target, and then Notes, and
9 immediately below that is a line with the words "Still
10 Involved."

11 Do you recall how you explained the meaning of
12 the phrase "Still Involved"?

13 A Yes. I went through and provided a summary of
14 these categories.

15 "Still Involved" meant they had not indicated
16 whether they had officially passed on the deal, or, in
17 the other case, been unresponsive. Those were sort of
18 the two other categories that we grouped.

19 Q So reading from Exhibit B, the second broad
20 category is "Unresponsive Parties" and the third is
21 "Passed" -- P-a-s-s-e-d -- and neither Alta and Apollo
22 nor PacBridge fell into either Unresponsive or Passed;
23 is that correct?

24 A We had not officially received -- that's
25 correct.

1 Q Did you have any concerns about putting two
2 still involved potential bidders together at a time
3 when you were soliciting competing bids for the
4 company?

5 MR. WINSBERG: Objection, Your Honor. That's
6 assuming facts not in evidence. That wasn't his
7 testimony.

8 MR. GURFEIN: Your Honor, the witness has
9 testified that he put them together for the purpose
10 of creating a transaction.

11 MR. WINSBERG: He testified --

12 MR. GURFEIN: The witness has testified that
13 both of them were still involved as potential
14 competing bidders.

15 MR. WINSBERG: He testified that PacBridge at
16 that point in time was no longer involved, was no
17 longer interested, I believe that's what his
18 testimony was, and he's assuming in his question
19 that that was not the case.

20 THE COURT: Objection's overruled. He can
21 respond appropriately to the question.

22 THE WITNESS: What is the question?

23 THE COURT: Mr. Gurfein.

24 BY MR. GURFEIN:

25 Q Did you have any concerns about competition in

1 the process of putting two still involved potential
2 bidders together as you did with Alta, Apollo and
3 PacBridge?

4 A Well, you know -- and, first off, I'm not sure
5 what date this was -- we still don't have a date on
6 this, right, Peter -- Mr. Gurfein -- when this was
7 provided?

8 Q I think we can put a collar on it. It was
9 sometime after December, but before March; would that
10 be fair to say?

11 A Okay. I don't know. That's fine.

12 Q Well, I think you indicated that it was in
13 December that you became aware -- oh, I'm sorry. You
14 said July was when you became aware that Alta and
15 Apollo were in the case, they became interested.

16 A That they had shown an interest.

17 Q And when did they start doing due diligence?

18 A In the December-January time frame.

19 Q And when would they have been added as
20 potential bidders? It would have been after the NDA
21 was signed; right?

22 A Correct.

23 Q In fact, I think that's what this Exhibit B
24 says at the top, "Target List/Signed NDAs."

25 A Right.

1 Q So the only way --

2 A So, yeah, it was January. Yeah. So --

3 Q So the only way to get on this list would be
4 to sign an NDA.

5 A Yes, that's true.

6 Q So it was sometime after they signed the NDA,
7 but before the March term sheet that you received.

8 A Okay.

9 Q Is that correct?

10 A That's correct.

11 Q Now, the question is: Did you have any
12 concerns about putting two potential bidders together
13 at a time when you were soliciting competing bids?

14 A Well, my concern at that moment in time was to
15 find a buyer for this transaction. It had been
16 marketed for seven months, and at that point we did not
17 have a viable buyer involved in a transaction.

18 Number two, in looking at this, it says,
19 "PacBridge Partners." I -- it says, "Uncertain of
20 current interest level."

21 We had no idea. They -- we had no idea what
22 their thoughts were, what their thinking was.

23 But they were still a party in this case
24 because they were the secured lender and had an
25 unsecured claim, so, you know -- and had a large equity

1 interest. So it seemed that Apollo and Alta would need
2 to be in touch with PacBridge at some point.

3 Q Do you recall at your deposition being asked
4 this question and giving this answer:

5 "Were you at all concerned about putting
6 PacBridge in touch with a potentially competing
7 bidder" --

8 MR. WINSBERG: I'm sorry.

9 BY MR. GURFEIN:

10 Q -- "when you made that"?

11 MR. WINSBERG: Can Mr. Gurfein at least tell
12 us what page he's on in the deposition so we can
13 try to follow along?

14 MR. GURFEIN: Of course. My apologies. Page
15 76 of the transcript.

16 BY MR. GURFEIN:

17 Q Do you recall being asked this question,
18 starting at line 9, and giving this answer:

19 "Were you at all concerned about putting
20 PacBridge in touch with a potentially competing bidder
21 when you made the introduction?

22 Answer: "No.

23 Question: "And why is that?

24 Answer: "I felt they both had blocking
25 positions and that they -- blocking position to a

1 transaction, and getting them on the same page would
2 affect a transaction faster.

3 Question: "What do you mean by a blocking --
4 by blocking positions?

5 Answer: "They could both object to each
6 other's offer.

7 Question: "In what capacity do you mean they
8 would object to?

9 Answer: "As equity holders who would have to
10 vote on this transaction."

11 Do you recall being asked that question and
12 giving those answers?

13 A Yes.

14 Q And what did you mean by they had a blocking
15 position?

16 A Well -- and I do appreciate those questions
17 because it allowed me to think, to think about it a
18 little bit more and jog my memory of that time frame.

19 But it's similar to, again, the Unsecured
20 Creditors Committee; right? I would have had no
21 problems with them getting in touch with the Unsecured
22 Creditors Committee to figure out a transaction. They
23 were in touch with you, expressing their interest with
24 the transaction.

25 So, you know, you could object, they could

1 object, and I figured PacBridge could also object.

2 Q Are you familiar with the term "blocking
3 position" in bankruptcy?

4 A As far as being like a fulcrum security
5 blocking position? Or is that a defined term? Is that
6 in the Bankruptcy Code as a --

7 Q I'm trying to understand what you meant when
8 you said "blocking position."

9 A Well, you could object.

10 Q Is there anyone -- strike that.

11 A That's what I was --

12 Q So --

13 A -- more trying to do --

14 Q So --

15 A -- is to try and --

16 Q -- do I understand that the reason you had no
17 problem putting two potential competing bidders
18 together is that each could have objected to a
19 transaction proposed by one of them?

20 A Was that -- say that again?

21 Q Would it be fair to say that you thought of
22 this as a blocking position because each of Alta and
23 Apollo on the one hand and PacBridge on the other, if
24 they had proposed a transaction, the other could have
25 objected to it?

1 A It was a component of understanding the
2 situation.

3 Q Well, what are the other components?

4 A Other components of figuring this out was that
5 PacBridge was also a secured holder and an unsecured
6 holder. So, you know, as a pretty significant
7 component of the case, significant party in the case
8 that's throughout the capital stack, seemed like they
9 needed to be in touch with them.

10 Q When did you first become aware that Apollo,
11 Alta and PacBridge were going to join in a single
12 proposal?

13 A I'm not sure. I'd have to go look at it. It
14 was in and around the mediation time.

15 Q And prior to the mediation time, you had
16 not -- not the Debtor, but you -- had not disclosed to
17 any representative of either the Creditors Committee or
18 the Equity Committee that Alta and Apollo and PacBridge
19 had been introduced to each other; is that correct?

20 A That -- yes. I'm not sure. Honestly, I'd
21 have to go back.

22 Q Well, as you sit here today, do you recall
23 whether you informed any representative of the
24 Creditors Committee or the Equity Committee that
25 PacBridge, Alta and Apollo had joined together?

1 A I don't recall whether it was just shown on
2 the term sheet or if it was discussed prior.

3 Q You referenced the Asset Purchase Agreement as
4 requiring -- and I don't recall the exact testimony,
5 so, please, I'm not telling, I'm asking you -- that
6 they were stewards for the artifacts. Do you recall
7 that testimony today?

8 A I think that I said that it would -- that the
9 transaction would be a real positive because they would
10 continue to be stewards for the artifacts. I believe
11 that's what I said.

12 Q And have you read through the Asset Purchase
13 Agreement?

14 A Yes.

15 Q And is there anything in the Asset Purchase
16 Agreement requiring that the purchasers remain stewards
17 for the artifacts for any period of time?

18 A I don't recall. I mean, I'd have to look at
19 it.

20 Q Is there anything in the Asset Purchase
21 Agreement that would prevent the purchasers from
22 subsequently selling any of the artifacts?

23 A I would -- I think that there -- there's
24 likely some reference to the covenants and conditions
25 by the Eastern District of Virginia, and so I -- that's

1 what I assume, it would take care of that, but I don't
2 know. I mean, I'm not a --

3 Q Well, let me ask you --

4 A My discussions -- what I can testify to is
5 that my discussions with Alta, Apollo and PacBridge
6 have only been surrounding continuing to operate this
7 business as a going concern.

8 Q Were you in court on July 25th when I
9 suggested that the French artifacts be impressed with
10 the trust?

11 A July -- was that here, or was that --

12 Q That was the hearing here on July 25th.

13 A That was a status conference?

14 Q That's correct.

15 A Yes, I was here.

16 Q And do you recall counsel to Alta and
17 Apollo --

18 A Yes.

19 Q -- commenting at that hearing, in words of
20 substance, that that was likely to be the only upside
21 that these purchasers would receive?

22 MR. WINSBERG: Your Honor, there's a
23 transcript. And Ms. Feldsher's in the courtroom,
24 she can --

25 MR. GURFEIN: I'll withdraw the question.

1 MS. FELDSHER: Your Honor, I can represent to
2 you that Mr. Gurfein completely miscited what I
3 said, and there was no such indication. And he was
4 the only one in the courtroom that indicated to the
5 Court that that was the only upside. I didn't say
6 that.

7 MR. GURFEIN: I'll withdraw the question.

8 THE COURT: He's withdrawn the question.

9 MR. GURFEIN: May I have just one moment, Your
10 Honor?

11 THE COURT: Certainly.

12 MR. GURFEIN: Your Honor, I ask that Exhibit A
13 and B be moved into evidence.

14 THE COURT: Any objection?

15 MR. WINSBERG: No objection.

16 THE COURT: Exhibits A and B are admitted.

17 (Equity Committee's Exhibits A and B were
18 received in evidence.)

19 MR. GURFEIN: Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Gurfein.

21 Anyone else wish to examine the witness?

22 (No response.)

23 THE COURT: Any redirect?

24 MR. WINSBERG: No, Your Honor.

25 THE COURT: Thank you very much. You may step

1 down.

2 (Witness excused.)

3 MR. BROOKS: Good afternoon, Your Honor.

4 Matthew Brooks for the Debtors.

5 Your Honor, in light of the time and our exits
6 from the courtroom in about an hour, rather than
7 call Ms. Jessica Sanders to the witness stand, who
8 is the corporate secretary of the Debtor, I have
9 some testimony that I think would be helpful for
10 the Court, and that, if called, that she would
11 testify to. I'd like to make a proffer of the
12 testimony in light of the time, unless there are
13 any objections.

14 THE COURT: Mr. Gurfein.

15 MR. GURFEIN: Given the hour, I hesitate to do
16 this, Your Honor, but I think it's important that
17 we have testimony and evidence.

18 THE COURT: That's quite all right.

19 You should call the witness.

20 MR. BROOKS: Okay. We're happy to do so, Your
21 Honor.

22 WHEREUPON,

23 JESSICA SANDERS

24 acknowledged having been duly sworn to tell the truth,
25 and testified upon her oath as follows:

1 THE WITNESS: I do.

2 COURTROOM ADMINISTRATOR: Please be seated.

3 DIRECT EXAMINATION

4 BY MR. BROOKS:

5 Q Good afternoon, Ms. Sanders.

6 A Good afternoon.

7 Q Could you please state your full name for the
8 record?

9 A Jessica Lee Sanders.

10 Q And where do you currently work?

11 A Premier Exhibitions, Incorporated.

12 Q And what position do you hold with Premier?

13 A I am the corporate secretary and the
14 vice-president of corporate affairs.

15 Q And how long have you held that position with
16 the company?

17 A Since August of 2016.

18 Q And in that position, can you briefly describe
19 for the Court your role with the company?

20 A Yes. My primary responsibilities are with the
21 board of directors. I coordinate and attend all of
22 their meetings. I draft their agendas. As part of the
23 executive management team, I help with the corporate
24 planning, as well as overseeing -- or I'm sorry --
25 executing against board initiatives in the day-to-day

1 management of the company.

2 As far as the Chapter 11 case, I helped
3 oversee and direct the legal team. I also monitor
4 developments in the case both here and in the Eastern
5 District of Virginia and report back to the board.

6 Q Okay. And as part of your responsibilities
7 that you described, are you familiar with the Debtor's
8 business?

9 A Yes, I am.

10 Q Can you just give us a brief overview of how
11 you're familiar?

12 A Well, I've been with the company for 11 years,
13 and in that time I've had several positions and I've
14 interacted with just about every department in the
15 company. And I've also worked side by side with five
16 out of the six CEOs and five iterations of the board.
17 So I'm very familiar with the business.

18 Also, in my adult course work, I used Premier
19 Exhibitions as case study.

20 Q And as a part of those responsibilities, do
21 you interact with employees of the company on a regular
22 basis?

23 A I do. I also manage the Atlanta office.

24 Q Thank you.

25 And are you familiar with the Debtors' Chapter

1 11 cases?

2 A Intimately.

3 Q And you've attended most of the court hearings
4 before this Court.

5 A The substantive ones, yes.

6 Q Are you familiar with the Debtors' financial
7 performance post bankruptcy?

8 A Yes.

9 Q And how are you familiar?

10 A As part of the executive management team, we
11 discuss the performance weekly. We also look at the
12 performance, not just financially, but of our vendors,
13 of our partners, and throughout the organization as
14 well.

15 Q And do you know whether the bankruptcy has
16 negatively impacted the Debtors' financial performance?

17 A Yes.

18 Q And how is that so?

19 A It has crippled our business. After filing
20 Chapter 11, some of the vendors changed terms on us.
21 Some of the venues wouldn't book. They either wanted
22 deposits put in escrow or wanted some kind of assurance
23 that we could actually deliver on future exhibitions.
24 We've had to terminate some contracts as part of
25 settlements and turn content over to competitors, and

1 we've had to work very hard to keep the relationships
2 that we have in place.

3 Q Okay. What about employee morale at the
4 company, has the bankruptcy affected that?

5 A Most certainly. Just taking a very quick step
6 back, Dinoking merged with Premier Exhibitions in
7 November 2015. The company was already going through
8 post-merger restructuring and reorganization.

9 Seven months later, we're filing for Chapter
10 11. Some people -- we had a bunch of layoffs prior to
11 the bankruptcy and then a bunch of people left.

12 Since we've been in Chapter 11, those
13 positions are hard to fill. It's hard to find talent
14 given the status of the company, especially when you
15 have other competing plans on file and nobody's really
16 clear what the direction is.

17 The second part of that is it's very difficult
18 to cast a vision for the company given the status of
19 the case, and I have been saying "three more months"
20 for two years.

21 Q And as part of your responsibilities with the
22 company, are you familiar with the sale process that
23 the Debtors and their professionals have run?

24 A Yes.

25 Q And how so?

1 A I've been involved with Glass Ratner since we
2 started the marketing process. I helped them develop
3 the CIM, the confidential information memorandum, the
4 teaser. I worked in conjunction with the committees to
5 develop the contact list based on some of the previous
6 transactions the company had. Also, helped with the PR
7 and the marketing and the advertising, coordinating the
8 news coverage that we got with Kekst, the PR agency.

9 I've also supplied the first wave of diligence
10 that we provided for the data room. I programmed and
11 designed the splash page for additional people -- for
12 people who wanted information on the sale process.

13 Q Okay. And throughout all that process, are
14 you familiar with the term sheet and the APA that's in
15 the exhibit binder before the Court?

16 A Yes.

17 Q And do you recall -- first of all, were you
18 directly involved with the negotiations of the APA and
19 the bid procedures?

20 A Yes, myself and management team and counsel
21 for the company. There were many phone calls and
22 extensive -- extensive negotiations with a lot of
23 lawyers.

24 Q And did your advisor report back to you on
25 behalf of the company on the status of negotiations?

1 A Yes, regularly, and also to the board of
2 directors.

3 Q And do you know whether the Debtors' board
4 approved the stalking horse agreement, the APA that's
5 before the Court?

6 A I'm sorry, can you repeat the question?

7 Q Do you know whether the Debtors' board of
8 directors approved the Asset Purchase Agreement that's
9 before the Court?

10 A Yes.

11 Q And how do you know that?

12 A I recorded the vote.

13 Q And when did the board do that?

14 A The Asset Purchase Agreement was approved June
15 14th, 2018. And I remember that date because it was
16 two years to the day of us filing Chapter 11.

17 Q And in deciding whether to approve the Asset
18 Purchase Agreement that you just described, did the
19 board discuss the terms of the agreement and the bid
20 procedures?

21 A Yes, extensively.

22 Q Did the board consider the APA agreement as a
23 whole?

24 A Yes, they did.

25 Q And do you know whether the Debtors exercised

1 their business judgment in deciding to enter into the
2 Asset Purchase Agreement and the related bid
3 procedures?

4 A So if you're asking me if the board acted --
5 if they were informed and they acted in good faith and
6 in honest belief that the decision they were making was
7 in the best interest of the company, then yes.

8 Q Thank you.

9 Are you familiar with the entities that
10 comprise the stalking horse purchaser, the term that we
11 use a lot, which is Alta, Apollo and PacBridge?

12 A Yes.

13 Q And could you describe that makeup for the
14 Court?

15 A Sure. Alta is a shareholder that got -- that
16 purchased shares after we got into Chapter 11. Same
17 with Apollo.

18 And PacBridge was involved with the Dinoking
19 transaction. Mr. Giovanni Wong was involved with the
20 company after the merger to kind of help settle things
21 and help with the transition.

22 His involvement with the company pretty much
23 stopped once we filed Chapter 11.

24 Q Based on your understanding of the stalking
25 horse group, do you know whether the stalking horse

1 group exercised any undue influence in the sale process
2 that you were personally involved in?

3 MR. GURFEIN: Objection, Your Honor. That's
4 rather conclusory.

5 MR. BROOKS: I'm asking for the witness'
6 personal knowledge, Your Honor.

7 MR. GURFEIN: What does "undue influence"
8 mean?

9 BY MR. BROOKS:

10 Q What's your understanding of "undue
11 influence," Ms. Sanders?

12 A Whether or not they influenced the company or
13 the board in any way.

14 Q Okay. Do you know, based on your personal
15 knowledge in the process, whether you thought the
16 stalking horse group exercised any control over
17 management in the negotiation and execution of the
18 Asset Purchase Agreement?

19 A Do I know? Yes. In my personal knowledge, do
20 I know? Yes. And the answer is, no, they did not.

21 Q And how so?

22 A Well, the process itself started with -- and
23 I'll just walk you through the process.

24 The process itself, Alta and Apollo first
25 contacted the company. Glass Ratner arranged to have a

1 management meeting. The management team met with -- we
2 had --

3 THE WITNESS: Sorry, Your Honor.

4 The management team met with them in January
5 and provided the corporate overview, the materials
6 that anybody interested in the company would have
7 had with the management team.

8 We took them through. We had a conference
9 call. They had some follow-up questions. The
10 following week we had another conference call.

11 At the end of January, they sent a term sheet
12 to the company that didn't have a whole lot of
13 information to it, and they sent it to us strictly
14 confidential. They said it was just to start
15 discussions or whatnot.

16 So they met with -- they came out to the
17 company in February. They met with the CFO and
18 myself. They toured our facility. We walked them
19 through the warehouse. Again, at this point it was
20 just Alta and Apollo.

21 We took them down to the venue in Atlantic
22 Station. We made arrangements for them to go visit
23 our venue in Orlando, and also in Chicago to see
24 Saturday Night Live.

25 The company participated in mediation at the

1 end of February, and representatives from Alta and
2 PacBridge were both there.

3 After that two days of mediation, we got a
4 revised term sheet that first week of March with
5 the three parties combined.

6 There was extensive -- and, again, that term
7 sheet went to the board. The board reviewed it,
8 discussed it with advisors. It was a very low
9 offer. The board was -- nobody was pleased with
10 it. Sorry.

11 There was extensive negotiations that happened
12 from that point.

13 About a month later, first week of April, they
14 sent a revised offer.

15 And then I think we received the final term
16 sheet a couple weeks later in April.

17 The management -- the board met, discussed the
18 term sheet, and it was the recommendation of our
19 advisors and counsel that we go for this term
20 sheet.

21 The company's cash position has been a concern
22 for a long time, looking at what they call the
23 runway, which being the ability of a company to
24 actually consummate a transaction and having enough
25 time.

1 So it was the advice of counsel to the board
2 that they execute the term sheet.

3 The board also had in front of it another
4 transaction that looked on paper significantly
5 better, so --

6 BY MR. BROOKS:

7 Q I'm sorry to interrupt you. What was the
8 transaction you're referring to?

9 A The transaction was a company called Loongs
10 who had -- it was an inbound offer, and it was -- I
11 can't quote the numbers, but it was about \$30 million
12 for about half the company, I believe, was the
13 construct.

14 The challenge was, Glass Ratner and Troutman
15 Sanders had been trying very hard to get proof of funds
16 from them, something that could indicate -- some kind
17 of a deposit or some kind of proof of funds that they
18 could actually do the transaction. Up until that
19 point, they hadn't received anything.

20 So the board, looking at the term sheet from
21 Alta, Apollo and PacBridge versus this offer, this
22 indication of interest, they decided instead to not
23 sign the term sheet, to give Loongs an additional two
24 weeks to come up with proof of funds. They said it was
25 in the best interest of the company because it was a

1 superior deal.

2 That was a very difficult phone call. Our
3 advisors were not happy, because they had tried so hard
4 to get proof of funds up until that point,
5 unsuccessfully. But they followed the direction of the
6 board, they went back to Loongs. They kept trying,
7 they kept trying.

8 Alta and Apollo said: Okay. Well, good luck
9 with that.

10 Two and a half weeks passed. We come back.
11 Counsel had advised that Loongs had basically stopped
12 responding. They did not come up with proof of funds,
13 and there was an indication that they may have to raise
14 some portion of it, which made the board very nervous.

15 So on I believe it was May 8 -- don't quote me
16 on it -- somewhere in May, the board authorized the
17 company management to execute the term sheet with Alta,
18 Apollo and PacBridge.

19 Q Thank you very much.

20 Final question, I believe. Do you have a view
21 of what will happen to the Debtors if they're not able
22 to exit bankruptcy within the next few months?

23 A Yes, I do have a view.

24 Q Can you share with the Court what that view
25 is, please?

1 A Well, throughout this process I've had to keep
2 levelheaded and just look at the facts as the facts
3 are, sit there and listen.

4 The fact is, my reality is and the reality for
5 our company and our employees, if we don't exit, we're
6 done. We're just done.

7 We have tried to keep the employees motivated
8 for as long as we can. We've got a good group of
9 people who are doing a good job, but if we can't
10 provide them direction or if the direction that we can
11 tell them is that there is no direction, there's three
12 different things that are going forward, or one thing
13 that's to liquidate and the other one is to break apart
14 the company and intends to keep you employed? I can't
15 offer that.

16 Our vendors and our partners, we've lost a bit
17 of credibility, because they keep checking back saying:
18 When are you going to exit, and we're not able to have
19 an answer.

20 We have to be able to emerge so that we can
21 start booking the venues going forward and start
22 replenishing our cash.

23 It's been impossible to try to keep this thing
24 moving this long, let alone -- and I hate to say this,
25 but sitting on management team calls on Mondays, our

1 CFO reports what the administrative costs in this case
2 are, so it's very difficult to tell our venues we can't
3 repair the carpet, but we're in the millions of
4 professional fees in this case.

5 MR. BROOKS: Thank you very much.

6 Just give me one second, Your Honor.

7 THE COURT: Sure.

8 MR. BROOKS: That's all I have, Ms. Sanders.

9 Thank you very much.

10 MR. GURFEIN: May I, Your Honor?

11 THE COURT: Certainly, Mr. Gurfein.

12 CROSS-EXAMINATION

13 BY MR. GURFEIN:

14 Q On the last point you raised, will you
15 continue or have you been offered employment continuing
16 with the Debtor by the new purchaser?

17 A The new purchaser has put in the Asset
18 Purchase Agreement that it is offering -- I'm sorry.
19 Can you hear me now?

20 Q Thank you.

21 A The purchaser has represented in the Asset
22 Purchase Agreement that they will be taking all of the
23 employees, including myself. Outside of those, there
24 have been no conversations about employment, no
25 conversations about compensation or terms.

1 Q And that includes Daoping Bao also as --

2 A He is on that list as well.

3 Q And is there any commitment that's been given
4 to you as to how long you're guaranteed employment with
5 the purchaser?

6 A Again, there's been no conversations about
7 compensation, employment at all, except for --

8 Q So --

9 A -- that list. So the answer is no.

10 Q So it's not improbable or it's not impossible
11 that they could turn around right after purchasing and
12 let you go.

13 A Of course it's possible.

14 Q And all the employees, for that matter.

15 A Yes.

16 Q When did you first learn of the revised terms
17 of the PacBridge, Alta and Apollo transaction that were
18 presented to the Court earlier today?

19 A The revised terms?

20 Q Forgive me. You have a questioning look on
21 your face.

22 A Yes, could you please explain.

23 Q Mr. Winsberg began today's session by saying,
24 among other things, that the offer was increased to
25 \$19.5 million, and that the break-up fee had been

1 increased, and that the term of the period toward the
2 auction and sale had been decreased.

3 Did you hear that earlier today?

4 A Well, quite honestly, the company had been in
5 negotiations with PacBridge, Alta and Apollo even
6 surrounding the term sheet and the purchase agreement
7 extensively.

8 Yes, there were discussions. We'd been trying
9 to get them to increase the offer for a while, for a
10 long time.

11 Those discussions were also this morning, but
12 it wasn't until walking in -- it wasn't until walking
13 in that we knew it was actually done.

14 Q And has the board approved that new offer?

15 A No.

16 Q How do we know that that --

17 A Has the board approved a higher offer than
18 what we've already filed? Is that the question?

19 Q The entire package: the increased break-up
20 fee, the shorter term on the auction, the purchase
21 price, has the board approved all of that?

22 A The board has not. But I am confident that
23 getting board approval will not be difficult
24 considering it's a higher and better offer. But of
25 course I cannot speak for the board.

1 Q Were you involved in the initial decision of
2 the company when it filed bankruptcy to sell certain of
3 the artifacts?

4 A Was I involved? Only to record the board
5 discussion.

6 Q Okay. Are you familiar with Giovanni Wong?

7 A Professionally.

8 Q And how do you know Giovanni Wong?

9 A As I represented, he was part of the Dinoking
10 transaction, was part of the merger. And he worked on
11 and around the company afterwards, getting himself
12 familiar with the company, getting familiar with the
13 operations. He was made it very -- he was hands on.
14 He made it very clear that their intention for
15 investment was to grow the business.

16 Q I'm sorry, I couldn't hear that last part.

17 A Sorry. He was very hands on after the merger,
18 learning our operations, learning about the business,
19 and he made it very clear that their intention was to
20 grow the business.

21 Q You said, "right after the merger." Did Mr.
22 Wong stay active with the company in that capacity at
23 all during the last two years?

24 A No. As I represented, his involvement with
25 the company ceased when we filed Chapter 11.

1 Q Did you say he was involved with the company
2 when you filed Chapter 11?

3 A I said his -- what I said was that his
4 involvement with the company ceased when we filed
5 Chapter 11.

6 Q Ceased when you filed Chapter 11.

7 A Correct.

8 Q Do you know if he was at all involved in the
9 Saturday Night Live exhibit in Chicago?

10 A When Saturday Night Live opened, it was pre-
11 merger. And when I -- and he was involved from the
12 standpoint that they were looking at the exhibition --
13 this is part of something they were just getting ready
14 to be involved with -- and as we were getting ready to
15 open, it was an all-hands-on-deck kind of thing, and
16 Mr. Wong and one of his partners were moving boxes and
17 sweeping and doing whatever else was needed, like our
18 crews were. They were right side by side with us.

19 Q During the period of time earlier this year,
20 when Alta and Apollo were visiting the different
21 venues, was Mr. Wong involved in those visits?

22 A I cannot answer that. I only made
23 arrangements for tickets for Mr. Li.

24 MR. GURFEIN: No further questions, Your
25 Honor.

1 MR. BROOKS: No further questions, Your Honor.

2 THE COURT: Thank you very much. You may step
3 down.

4 THE WITNESS: Thank you, Your Honor.

5 (Witness excused.)

6 MR. WINSBERG: That's our evidence, Your
7 Honor. We're happy to proceed with our argument,
8 if Your Honor would like.

9 MR. GURFEIN: Your Honor, in connection with
10 the value of this offer, Mr. Arlan Ettinger of
11 Guernsey's Auction House, the director and
12 president, is here today. I did want to introduce
13 Your Honor to Mr. Ettinger.

14 We have submitted, in connection with our
15 disclosure statement and the amended disclosure
16 statement, two declarations of Mr. Ettinger.

17 The first is in docket number 1044, starting
18 at page 111 of 120 and ending at page 120 of 120.
19 And the declaration of Mr. Ettinger in further
20 support, which appears at docket 1179-5 at pages 2
21 of 3 and 3 of 3.

22 I have copies of those declarations for Your
23 Honor and for counsel, if I may approach.

24 THE COURT: Certainly.

25 (Mr. Gurfein hands documents to the Court and

1 to counsel.)

2 MR. GURFEIN: In connection with the value of
3 the company and this sale proposal before Your
4 Honor, we move these declarations into evidence.

5 And Mr. Ettinger is here if anyone wants to
6 cross-examine him.

7 MR. WINSBERG: Give us a moment, Your Honor.

8 THE COURT: Certainly.

9 MR. WINSBERG: We're deciding whether we want
10 to put him on the stand, in light of the time that
11 we have left.

12 THE COURT: Certainly.

13 MR. GURFEIN: Apologies, Your Honor. In
14 connection with the last exhibit, the last further
15 support, there's also the -- attached also to that
16 declaration was docket 1179-6, pages 2 of 39
17 through 39 of 39, and we ask that be admitted in
18 evidence for this hearing as well, Your Honor.

19 MR. WINSBERG: Can we just get a five-minute
20 break --

21 THE COURT: Certainly.

22 MR. WINSBERG: -- just so we can --

23 THE COURT: Certainly. Take your time. If we
24 need to continue to some other day, we will.

25 MR. WINSBERG: The Debtors need to finish the

1 case today, Judge. If we could just come back at
2 -- would you give us till 4:05?

3 THE COURT: We'll take a five-minute recess.
4 (Short recess.)

5 THE COURT: All right. We continue with the
6 Titanic hearing.

7 MR. WINSBERG: Your Honor, what we've decided
8 to do to streamline is to let the testimony through
9 the declarations come in. We have two questions
10 for the witness they call on cross. We have two
11 questions for them.

12 The other thing that I wanted to inform the
13 Court is that the stalking horse purchaser's
14 counsel has agreed -- has informed me that the deal
15 that we introduced today is good through today, and
16 because the company is where the company is, it may
17 not be there tomorrow or the day after. I just
18 wanted to inform the Court.

19 MR. GURFEIN: Your Honor, we'll call Mr. Arlan
20 Ettinger to the stand.

21 THE COURT: Thank you.

22 WHEREUPON,

23 ARLAN ETTINGER

24 acknowledged having been duly sworn to tell the truth,
25 and testified upon his oath as follows:

1 THE WITNESS: I do.

2 COURTROOM ADMINISTRATOR: Please be seated.

3 CROSS-EXAMINATION

4 BY MR. BROOKS:

5 Q Good afternoon, Mr. Ettinger.

6 A Thank you.

7 Q Two questions about your testimony and your
8 prior declaration and the supplement that's been
9 provided to the Court today.

10 Has your employer, Guernsey's, agreed to
11 guarantee any minimum recovery for the auction of the
12 -- the contemplated auction of the French artifacts?

13 A No.

14 Q Paragraph 4 of your declaration of August 28th
15 indicates that there is a marketing time frame of 60 to
16 90 days. Do you see that?

17 A Yes.

18 Q Does that 60 and 90 days take into account any
19 potential objection to the liquidation of the French
20 artifacts by NOAA or the Department of Justice?

21 A The 60 to 90 days would start when we were
22 given the green light to proceed with producing an
23 auction. If there was an interruption in that process,
24 that timeline would no longer hold. If it was put on
25 hold, there's nothing we could do about it.

1 But once we had clear sailing, we could
2 produce the event that we proposed in the 60- to 90-day
3 period.

4 Q So the 60 to 90 days would commence after
5 there was an approval by all necessary courts to
6 liquidate the French artifacts --

7 A Yes.

8 Q -- subject to your declaration.

9 A Yes.

10 MR. BROOKS: That's all I have. Thank you
11 very much.

12 MR. GURFEIN: If I may, one question?

13 THE COURT: Certainly, Mr. Gurfein.

14 REDIRECT EXAMINATION

15 BY MR. GURFEIN:

16 Q In reviewing your declaration, the original
17 one you filed on May 31, in paragraph 13, the last
18 sentence says, "But based upon my years of experience
19 and the sale by auction of rare and historic items in
20 general, I believe these artifacts are certainly
21 capable of this range."

22 May I ask you to tell us what you meant by
23 your years of experience in the sale by auction of rare
24 and historic items, in general?

25 A I'm the founder of Guernsey's, the New York-

1 based auction house. I started that in 1975, so that's
2 43 years of experience producing many of the most high
3 profile and successful auctions in history.

4 We are not the largest auction house, Your
5 Honor. Sotheby's is that, Christy's follows a close
6 second. But we are routinely ranked as one of the
7 world's leading auction houses by producing auction
8 after auction that have set world record amounts by
9 virtue of receiving global media coverage. That's been
10 the secret to whatever success we've had.

11 We've conducted the world's largest auction,
12 which was the sale of the contents of the ocean liner
13 SS UNITED STATES. We did the first auction of artwork
14 from the Soviet Union during the cold war. We produced
15 all three of the John F. Kennedy auctions; the Franklin
16 Roosevelt auction; the President Ford auction, working
17 directly with Betty Ford. We did many auctions on
18 behalf of museums, prominent museums.

19 In recent times, we just concluded an auction
20 series of several thousand very rare posters that were
21 thought destroyed during the Holocaust, but found
22 secreted away in a German museum.

23 We held an auction about less than a year ago
24 that brought for a particular guitar \$3.5 million, with
25 all the proceeds going to the Southern Poverty Law

1 Center, and Morris Dees. You may be familiar with Mr.
2 Dees, who I had the honor of working with.

3 We did an auction that received a great deal
4 of publicity about four months ago when we sold, on
5 behalf of a homeless man, battered old wooden doors
6 from New York City's somewhat legendary Chelsea Hotel,
7 doors that a sane human being wouldn't think were worth
8 a dollar apiece. But it was a compelling story, and
9 with proceeds in large part going to an organization
10 called City Harvest that provides food for the
11 homeless, a number of these doors brought more than
12 \$100,000 apiece.

13 In short, in virtually every direction
14 Guernsey's has taken, we've been able to establish
15 world record amounts.

16 One that is often looked at is -- in the world
17 of auctions, a baseball has always been a barometer or
18 a gauge of the auction climate. Sotheby's had set the
19 world record of \$126,000 for a single baseball. That
20 was thought to be a record that would never be
21 eclipsed. Four months later, we sold a ball for \$3
22 million.

23 Again, that's based upon our track record of
24 working with the leading media networks around the
25 world. In the United States that would certainly

1 include the Associated Press, ABC, NBC, CBS, Fox, NPR;
2 abroad it's the BCC, Reuters, AFP in France.

3 And I can assure everyone that is hearing me
4 now that a collection, whether it's 2,000 artifacts or
5 one artifact, recovered from the ocean floor from the
6 TITANIC will be a newsworthy story on a global scale.

7 Q Mr. Brook asked you whether Guernsey had given
8 a guarantee, and you've got some figures in here about
9 potential auction results.

10 How comfortable do you feel with those numbers
11 you've placed in there?

12 A There is no certainty at auction, I want to be
13 abundantly clear about that, but yet, for lack of a
14 better term, the phrase "slam dunk" I would think would
15 be well used here in my belief that, were artifacts
16 recovered from the sea floor to be sold from the
17 TITANIC, that it would be hotly contested. And when
18 something is hotly contested, prices move upwards.

19 We were tangentially involved earlier this
20 year with a painting that was acquired by a close
21 friend of mine who consulted with me about it, acquired
22 for \$10,000. After research, the painting then sold
23 twice, the final time selling for \$450 million.

24 The handful of objects that have been sold
25 that have been found as property from survivors have

1 brought astounding amounts.

2 A single one-page menu that never went down
3 with the ship but was certainly connected to the ship,
4 brought, I believe, \$150,000 not too long ago. A
5 cracker, a biscuit, found in the pocket of a survivor,
6 brought close to \$50,000.

7 As you may -- as this second document that I
8 signed just a few days ago speaks, we came to the
9 committee with the notion that it might be a
10 recommendation not to present all 2,000-plus items from
11 the French collection, which we were told might be
12 available. Other items recovered from the ocean were
13 never on the table, so to speak.

14 But it was my opinion that perhaps a very
15 proper resolution would be only to sell a small number
16 of objects, because even a small number, with a smaller
17 body of material available, the prices for those items
18 would be all the greater, and, in a strange way, might
19 conceivably be able to get as much for 20 objects as
20 you could get for 2,000 objects, and then that way let
21 the balance of the items go to a museum where they will
22 be preserved forever.

23 MR. GURFEIN: No further questions, Your
24 Honor.

25 THE COURT: Thank you.

1 MR. GURFEIN: I would now move to have
2 admitted into evidence the two declarations and the
3 attachment of the proposal from Guernsey's.

4 MR. BROOKS: No objections, Your Honor.

5 We have no further questions for Mr. Ettinger.

6 THE COURT: Very good. Those documents are
7 admitted.

8 (Equity Committee's Exhibits C and D were
9 received in evidence.)

10 MR. BROWN: Your Honor, we're going to call
11 two other witnesses real quick.

12 THE COURT: Thank you very much, Mr. Ettinger.
13 Thank you very much.

14 (Witness excused.)

15 MR. BROWN: Your Honor, if we may, the Equity
16 Committee would like to call Gilbert Li to testify.
17 He's the representative of the stalking horse
18 group.

19 MR. WINSBERG: Your Honor, just noting the
20 objection by the Debtors. As you heard, the
21 testimony on the company, its dire need to
22 conclude. I don't know what the Equity Committee
23 is trying to do in this case. We're trying to move
24 forward to a conclusion, and their disclosure
25 statement cannot be confirmed now. There is no

1 impaired accepting class that will accept this
2 plan. It's facially defective.

3 I just want to state that objection on the
4 record.

5 We got 120 jobs at stake. We need to move
6 forward with the sale as proposed.

7 THE COURT: Mr. Brown.

8 MR. BROWN: Your Honor, I'd like to call Mr.
9 Li. I think it will become clear. These are
10 matters for argument by Mr. Winsberg. I think
11 we're still in the evidentiary stage.

12 THE COURT: Very good. Mr. Brown.

13 MS. FELDSHER: Your Honor, I'm going to have
14 to apologize.

15 MR. BROWN: Your Honor, I would like to call
16 Mr. Gilbert Li of Alta to the witness stand. He's
17 present in the courtroom. He's a representative of
18 the stalking horse group.

19 MS. FELDSHER: Your Honor, we have no idea,
20 other than a sideshow or delay, what's going to be
21 asked. Our client -- we never offered our client.
22 We didn't submit any declarations from our client.

23 The relevant inquiry on the bidding procedures
24 is the Debtors' business judgment. It's not
25 relevant to call our client other than

1 harassment --

2 MR. BROWN: They were negotiated -- they spent
3 hours today talking about how extensive the
4 negotiations were, all these other things. They're
5 saying they're going to walk. Which, by the way,
6 Your Honor, let them walk. That makes our plan the
7 best alternative, which provides for more money.

8 THE COURT: Objection's overruled. You can
9 call the witness.

10 MR. BROWN: Thank you.

11 (Ms. Feldsher and Mr. Li conferring.)

12 MR. BROWN: Your Honor, it's totally
13 inappropriate for her to be coaching a witness
14 before he goes on the witness stand.

15 MS. FELDSHER: Your Honor, I apologize. I was
16 not coaching the witness. My client, as you can
17 imagine, is not prepared, was not prepared to be
18 called up. I've never seen this happen in all of
19 my years of practicing where a client whose
20 declaration has not been submitted was called up.

21 All I said to him was: Just be mindful not to
22 disclose advice of counsel --

23 MR. BROWN: Coaching.

24 MS. FELDSHER: -- which I think is
25 appropriate.

1 THE COURT: All right.

2 MR. BROWN: Exactly what's happened, coaching.

3 THE COURT: He may step to the witness stand.

4 WHEREUPON,

5 GILBERT LI

6 acknowledged having been duly sworn to tell the truth,

7 and testified upon his oath as follows:

8 THE WITNESS: I do.

9 COURTROOM ADMINISTRATOR: Please be seated.

10 THE COURT: Mr. Brown.

11 MR. BROWN: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. BROWN:

14 Q Good afternoon, Mr. Li.

15 A Good afternoon.

16 Q What is your position with the stalking horse
17 group?

18 A What is my position?

19 Q Are you familiar with the term "stalking horse
20 group"?

21 A Yes.

22 Q Okay. And what is your understanding of the
23 meaning of that group?

24 A It is the group that has provided the company
25 with the stalking horse proposal.

1 Q And your company is a part of that group?

2 A Yes.

3 Q And what's the full name of your company?

4 A Alta Fundamental Advisors.

5 Q And what's your role with that company?

6 A Managing partner.

7 Q And what is Alta Financial Advisors' role with
8 the stalking horse group?

9 A It is a part of that group.

10 Q What percentage?

11 A 33 percent.

12 Q Were you involved directly with negotiating
13 the Asset Purchase Agreement that the Debtors are
14 asking the Court to approve today?

15 A Yes, I am.

16 Q Were you involved in negotiating bidding
17 procedures that were part of that Asset Purchase
18 Agreement?

19 A Yes.

20 Q Has your company been a part of asset purchase
21 arrangements from bankruptcy sales before?

22 A Yes.

23 Q How many have you been involved with?

24 A I don't recall right now.

25 Q Have you ever threatened to walk from a deal

1 as part of a negotiating tactic?

2 A Repeat that again?

3 Q Have you ever threatened to walk from a deal
4 as part of a negotiating tactic?

5 A Sometimes.

6 Q Okay. And so is it true, as represented in
7 court -- I assume you heard Mr. Winsberg -- that the
8 stalking horse group will walk if the Court doesn't
9 approve the sale transaction today?

10 MR. WINSBERG: That's not what I said.

11 BY MR. BROWN:

12 Q Let me rephrase it. Is it true the stalking
13 horse group is going to walk if the Court doesn't
14 approve the bidding procedures that were negotiated
15 today?

16 THE WITNESS: What did you say?

17 MR. WINSBERG: That's not what I said. What I
18 told Your Honor was they had informed me that, if
19 it didn't get approved today, there's the potential
20 they were going to walk. And they said tomorrow,
21 they may not be here tomorrow. Time is of the
22 essence.

23 THE WITNESS: I am not here tomorrow, so it's
24 likely to be terminated in whatever time it is.

25 BY MR. BROWN:

1 Q Is \$50 million from an auction of assets a
2 better proposal for a company than \$19.5 million under
3 your sale agreement?

4 A Repeat that, please?

5 Q Is \$50 million, if achieved from the auction
6 of the assets of the company, a better result than your
7 \$19.5 million offer?

8 A Well, you can ask the same thing if it's \$100
9 million --

10 Q That's not -- I want a yes-or-no answer.

11 A It's a hypothetical.

12 Q Is it a better deal for the company or not,
13 yes or no?

14 A For the company, no.

15 Q Why?

16 A The company is a going concern. If you're
17 auctioning an asset, there is no company.

18 Q Is it possible --

19 A There's a 100-plus employees.

20 Q Is it possible in this case that the assets of
21 the company are worth more than the going-concern
22 value?

23 A Is it possible? Sure.

24 Q Okay. Has the stalking horse group committed
25 to keeping the American -- let me back up.

1 Are you familiar with the different sections
2 of artifacts recovered from the TITANIC shipwreck?

3 A I am.

4 Q So you know there's an American section of
5 artifacts and a French section of artifacts?

6 A Sure.

7 Q And has the stalking horse group committed to
8 keeping those collections together in connection with
9 purchase of its assets?

10 A We are only at the stage of negotiating and
11 finishing completing the Asset Purchase Agreement. We
12 have not even gone towards that much of a business
13 plan.

14 Q Have you thought about selling the French
15 artifacts off to achieve money or revenues if you're
16 the successful purchaser?

17 A I have not gone to that point.

18 Q Is it possible that that's what you would do?

19 A It's possible I won't, either. So, yes, on
20 both sides.

21 MR. BROWN: One moment, Your Honor.

22 THE COURT: Certainly.

23 MR. BROWN: Nothing further for this witness,
24 Your Honor. I would intend afterwards to call Mr.
25 Giovanni Wong.

1 THE COURT: Thank you.

2 MS. FELDSHER: Your Honor, one question?

3 THE COURT: Certainly.

4 CROSS-EXAMINATION

5 BY MS. FELDSER:

6 Q Mr. Li, you're familiar with the Asset
7 Purchase Agreement that the stalking horse group signed
8 in this case?

9 A Yes.

10 Q Under that agreement, what does it say about
11 the stalking horse's -- the stalking horse group's and
12 the covenants and conditions, their willingness to
13 comply with the covenants and conditions?

14 A In the Asset Purchase Agreement, yes, it is --
15 the company or the future purchaser will comply with
16 all covenants and conditions of the (inaudible).

17 MS. FELDSHER: No further questions, Your
18 Honor.

19 THE COURT: Thank you.

20 MR. BROWN: Nothing further from this witness,
21 Your Honor.

22 THE COURT: Thank you very much. You may step
23 down.

24 (Witness excused.)

25 THE COURT: Mr. Brown.

1 MR. BROWN: Your Honor, if I could call
2 Giovanni Wong.

3 MR. GROSSMAN: Your Honor, just for the
4 record, same objection that Ms. Feldsher that to
5 Li's being called. I have the same objection to
6 Mr. Wong being called.

7 THE COURT: Thank you.

8 Objection's overruled. Mr. Wong may testify.

9 WHEREUPON,

10 GIOVANNI WONG,
11 acknowledged having been duly sworn to tell the truth,
12 and testified upon his oath as follows:

13 THE WITNESS: Yes.

14 COURTROOM ADMINISTRATOR: Please be seated.

15 THE COURT: Mr. Brown.

16 MR. BROWN: Thank you.

17 DIRECT EXAMINATION

18 BY MR. BROWN:

19 Q Good afternoon, Mr. Wong.

20 A Good afternoon.

21 Q Can you tell the Court what your role was with
22 the company initially, how you became involved with
23 this Debtor entity?

24 A I represented Dinoking as their financial
25 advisor as part of the merger with Premier Exhibitions.

1 So that's how I kind of got involved.

2 Q Did you also, prior to the bankruptcy, have a
3 role with Premier Exhibitions itself?

4 A During the bankruptcy?

5 Q Prior to the bankruptcy.

6 A Prior to the bankruptcy, not officially -- not
7 officially, because post merger we understand that the
8 -- I stayed on a little bit to help with the
9 integration of the two entities, as well as there was
10 obviously a financial situation of the company, and I
11 was there to help provide any advice or help that I
12 could give.

13 Q And do you have separate business dealings
14 with Daoping Bao outside of involvement with the Debtor
15 company?

16 A No, I do not.

17 Q Did you have prior business dealings prior to
18 your relationship with Dinoking?

19 A No, I do not.

20 Q Have you worked with Mr. Bao in any capacity
21 since you have engaged with Dinoking and the Debtor?

22 A Sorry. Ask the question again?

23 Q Have you worked with Mr. Daoping Bao in
24 connection with any other matter other than your
25 relationship with the company since you've become

1 involved?

2 A No.

3 Q What is your role with the stalking horse
4 group?

5 A Just like Mr. Li, we are part of the stalking
6 horse group as a --

7 Q Who makes the calls? Who makes the decisions?
8 How are decisions made amongst the stalking horse
9 group?

10 A The stalking horse group? We talk and
11 deliberate and make a decision as a group.

12 Q And has the stalking horse group decided that
13 it's going to withdraw its offer if it's not approved
14 here today?

15 A Have we decided?

16 Q Yes, sir.

17 A Not that I'm aware of.

18 Q Has there been any discussion to that effect,
19 that you'll withdraw the offer that you're asking the
20 Court to approve bidding procedures if it's not
21 approved today?

22 A I think as part of every business decision we
23 make, we discuss both go and no go and pros and cons of
24 every option.

25 Q Are you familiar with the artifacts, the

1 French versus the American artifacts?

2 A Yes, I think so, believe so.

3 Q And are you, as part of the stalking horse
4 group, willing to commit to keep those collections
5 together infinitum?

6 A I don't think -- just like Mr. Li has said, I
7 don't think we have extensive discussions -- enough
8 extensive discussion internally to make that
9 determination.

10 Q So it's possible that you could vote in favor
11 of splitting those up and trying to sell those
12 artifacts in the future.

13 A Everything is possible.

14 MR. BROWN: One moment, Your Honor.

15 Nothing further.

16 THE COURT: Thank you.

17 MR. GROSSMAN: No cross, Your Honor.

18 THE COURT: Thank you very much. You may step
19 down.

20 (Witness excused.)

21 THE COURT: Any further witnesses or any
22 further evidence?

23 MR. BROWN: Your Honor, the Equity Committee
24 rests the presentation of evidence, but we'll
25 reserve for any rebuttal if there's other evidence

1 presented.

2 MR. WINSBERG: I don't believe that we intend
3 -- we are offering no other evidence, Judge, so the
4 record is, from our perspective, closed.

5 THE COURT: Very good.

6 Any further evidence?

7 MR. MCCLAMMY: No further evidence, Your
8 Honor.

9 THE COURT: Very good.

10 Closing arguments?

11 MR. WINSBERG: I keep looking back at the
12 clock, Your Honor. I had this long argument
13 presentation, an impassioned plea for Your Honor,
14 but I think, in light of what happened earlier
15 today, Your Honor saw in the courtroom alone that
16 this transaction's at arm's length and in good
17 faith. The purchaser came in and bumped the price
18 up.

19 This is the only viable transaction. There
20 are 120-plus jobs at stake if this transaction
21 doesn't go forward. There is no funded
22 alternative.

23 The Equity Committee, you heard them in court,
24 they're fine with destroying the company. They're
25 fine with destroying the going concern of the

1 company, having it liquidate and selling off some
2 artifacts.

3 We don't believe that's appropriate or the way
4 to go in this case. We believe preserving the
5 going concern of the company is the right thing to
6 do.

7 And this transaction that we propose will do
8 just that. The company will emerge from bankruptcy
9 under new ownership, with a better -- with an
10 ability to reinvest in capital expenditures.

11 The purchase agreement makes clear and the
12 sale order makes clear that it's going to be
13 subject to the revised covenants and conditions.
14 It's a stock sale of RMST.

15 And whatever happens in the future, and
16 there's all hypotheticals, the district court judge
17 in that case has made herself very clear about what
18 needs to be approved before anything can happen.

19 I would note, Your Honor, we did appear in
20 front of the district court. We attached that
21 transcript. Judge Smith agreed with Your Honor on
22 the jurisdictional analysis that you had put forth
23 in your scheduling order.

24 I would note that when I reviewed your
25 scheduling order, Your Honor, that Your Honor cited

1 two cases, the Michaelson case and the Landmark
2 case in its order, and those decisions make one
3 thing very clear, that disclosure statements
4 matter.

5 Michaelson is a case where confirmation of the
6 plan was revoked based upon inaccurate information
7 in a disclosure statement. Your Honor cited that.

8 Landmark is even more powerful in this case,
9 Your Honor. In Landmark, the Court allowed a
10 creditor to file a competing disclosure statement
11 and sale plan to the debtor's plan. And the
12 debtor, in its plan to sell assets -- the debtor
13 had a plan to sell assets to a third party, and the
14 creditor proposed its own plan to sell that asset
15 to itself, and it filed a motion to go and do that,
16 as Your Honor knows, you cited that decision. And
17 notably in that decision -- I don't think it's by
18 accident, Your Honor -- to address a risk that the
19 debtor's buyer will withdraw its offer if the Court
20 permitted the creditors' plan to be filed with the
21 court and disclosure statement, the bankruptcy
22 court in that case conditioned the creditors'
23 permission to file on the proviso that, quote,
24 satisfactory evidence of both a contractual duty
25 and financial ability to perform the purchase has

1 been proposed by the plan.

2 Disclosure statements matter.

3 In this case, the Equity Committee has no
4 funding. It has a non-binding term sheet for up to
5 \$7 million. You heard Mr. Glade testify that's
6 insufficient to refinance the DIP loan; pay off the
7 admin expenses; pay the secured lender, Mr.
8 Grossman's client, \$4 million on the effective date
9 and emerge with enough money to litigate.

10 There's just not -- funding is not there to
11 confirm that plan, and we know that now.

12 More importantly, we know now that there's no
13 impaired accepting class that will vote for this --
14 that they can get to vote for this plan. The
15 largest unsecured creditor is going to vote against
16 the plan.

17 There should be no reason to go forward --
18 putting aside the conditions on the stalking horse
19 settlement agreement, there should be no reason to
20 move forward with that disclosure statement and
21 again distract the Debtors, which are on a short
22 leash. You heard Mr. Glade's testimony.

23 I could go through the Lionel standard: sound
24 business justification, adequate notice, fair and
25 reasonable price and in good faith.

1 The testimony speaks for itself. The Debtors
2 have met every prong. You've heard nothing to the
3 contrary.

4 Mr. Glade testified that the company is
5 literally out of cash. If you were to add the
6 administrative expenses today, it's out of cash.
7 It drags on through the end of the year if you
8 don't pay the admins.

9 But you heard Ms. Sanders testify as well that
10 the company is hurting. It can't retain talent, it
11 can't attract talent, employee morale is bad.

12 And the stalking horse group has indicated to
13 us they want to buy a going concern. And if this
14 company -- if they have to come into the company
15 and the company is gone and all the key employees
16 are gone, they may not close.

17 We need to move now.

18 Adequate notice has been provided. This
19 motion was filed on June 15th, over two months ago.
20 The Court initially set the bid procedures down for
21 July 25th. Instead, Your Honor gave additional
22 time, something that, Your Honor, I actually
23 suggested at the hearing, gave additional time to
24 see whether people come up with the funds. That
25 didn't happen, so we're here today.

1 So there's adequate notice of the sale
2 process. This is not a case where Debtors are
3 filing a motion on day one of the case and seeking
4 to sell their assets within an expedited time
5 frame.

6 The testimony clearly establishes that the APA
7 and bid procedures are negotiated at arm's length
8 and in good faith. The purchase price jumped from
9 15.5 to 17.5 to 19.5.

10 The declaration of Mr. Glade and -- the
11 testimony of Mr. Glade and Ms. Sanders, as well as
12 the declaration of Ms. Feldsher, also established
13 the parties negotiated in good faith. The Debtors
14 disclosed all of their known connections with the
15 stalking horse agreement.

16 And I would refer Your Honor to page 32 -- I'm
17 sorry -- paragraph 32, pages 17 and 18 of the
18 Debtors' motion that we filed on June 15th where we
19 disclosed all the known connections with these
20 transactions.

21 The bid procedures, as Mr. Glade testified,
22 are fair and reasonable under the circumstances,
23 and the stalking horse would not go forward without
24 them.

25 Now, one last point that was raised by the

1 Equity Committee in their objection and which got
2 raised again today is that this is an insider
3 transaction, citing the statutory insider provision
4 in 101 of the Bankruptcy Code.

5 Besides disclosing all of their connections,
6 none of the individuals or entities that make up
7 the stalking horse group comprise a statutory
8 insider.

9 But that whole analysis by the Equity
10 Committee misses the mark, because the statutory
11 insider definition really deals with 547 of the
12 Bankruptcy Code, whether it's a 90-day look-back or
13 a year look-back.

14 When you look at the 363 of the Bankruptcy
15 Code -- and I've read it multiple times -- there's
16 nothing in there that talks about an insider deal
17 versus a non-insider deal, and the courts show
18 that. Instead, in looking at that, at whether a
19 363 sale is whether the shareholders of the
20 stalking horse exercised actual management control
21 over the debtor's business.

22 Is the stalking horse purchaser directing the
23 debtor what to do? That's the inquiry essentially
24 that the courts look at. They're not looking at
25 whether there's a statutory insider.

1 So not only are we not a statutory insider,
2 the evidence clearly shows that the stalking horse
3 purchaser is not directing the management of the
4 these Debtors. The Debtors are advised by its
5 professionals and exercise their business judgment,
6 and the disputed testimony establishes that.

7 But even if the Court was to apply a higher
8 standard, which some courts do in looking at
9 whether it's an insider transaction and provided a
10 higher scrutiny, well, the record's not going to
11 change. The Court still should approve it. The
12 testimony is clear this was negotiated at arm's
13 length, in good faith, and the price is fair and
14 reasonable. The analysis doesn't change should the
15 Court even somehow find that heightened scrutiny
16 should apply.

17 The Equity Committee also cited the
18 exclusivity provision as a problem in their papers.
19 Again, the testimony is that hasn't -- not only do
20 they misstate it in their papers, but the testimony
21 is it hasn't impacted or chilled the bidding. The
22 testimony was also by Mr. Glade that the provisions
23 of the bid procedures don't chill the bidding.

24 Your Honor, time is of the essence. We
25 respectfully ask Your Honor to approve the bid

1 procedures as I outlined earlier today, that you
2 grant that motion, you deny the Equity Committee's
3 disclosure statement, and allow these cases, which
4 I believe everybody believes need to come to an
5 end, to come to an end, and a good conclusion at
6 that, an 80 cent return to creditors and 120-plus
7 people preserve their jobs.

8 Thank you.

9 THE COURT: Thank you.

10 Mr. Gurfein.

11 MR. GURFEIN: Thank you, Your Honor. If it
12 please the Court.

13 The Equity Committee filed an amended
14 disclosure statement and an amended plan, and we
15 had a lot of moving pieces and a lot of moving
16 people. Mr. Winsberg and I were in Norfolk before
17 Judge Smith, and then Mr. Brooks and I were in
18 Atlanta for Mr. Glade's deposition, and I'm here
19 today.

20 So I apologize that we were delayed in filing
21 that amended plan and amended disclosure statement,
22 but the reason I apologize also is that there were
23 two inadvertent errors that we put into the amended
24 plan and disclosure statement.

25 First, I want to note on page 26 of 60 in

1 docket 1179, we had two numbers wrong. We
2 increased the amount of the DIP loan that has to be
3 paid off from \$5,112,000 to \$5,375,000.

4 We also misstated the priority claims that had
5 to be paid on that same page. We had put down
6 \$252,000. We had meant to increase that to
7 \$542,000.

8 But in addition, Your Honor, we changed the
9 plan to provide for post-confirmation interest to
10 be paid to general unsecured creditors and to
11 provide a premium of 20 percent on all claims, so
12 that unsecured creditors would not only be paid in
13 full with interest, but would receive a premium.
14 And so the general unsecured creditors are not
15 impaired under the amended Equity Committee plan.

16 And, in any event, the question of impairment
17 becomes a confirmation issue. In fact, everything
18 we've heard about the disclosure statement and the
19 plan are confirmation issues.

20 We attached the exit financing term sheet, and
21 between now and confirmation expect to convert that
22 term sheet into a DIP loan.

23 We heard from Mr. Ettinger, both in his
24 declarations and on the stand, that the proposal to
25 sell a handful of French artifacts is a means to

1 see all creditors paid in full and to see value
2 delivered to equity holders.

3 And it's worth remembering, to put this in
4 context, that in June 2016, the Debtor agreed with
5 that. And we quoted at length from the June 2016
6 sale motion in which the Debtor proposed to sell
7 artifacts, noting that they had never before sold
8 an artifact and then noting all the value that's
9 locked in those artifacts.

10 And we heard from representatives of the
11 stalking horse bidder that they certainly haven't
12 given up the idea of separating those collections.
13 They may have testified they didn't make that
14 decision yet, but that's a decision that's still
15 available to them that would be considered.

16 In the Debtor's pleadings, they go through
17 each of the proposed bid procedures and bid
18 protections, and for each bid protection, they can
19 cite a case saying another court has approved this.

20 I suggest, however, that in this case, the
21 cumulative effect of all of the bid protections,
22 not just the break-up fee, but the exclusivity
23 period, we had it wrong. I admit that, I misread
24 it and I apologize. The period from the signing of
25 the Asset Purchase Agreement until the date of the

1 bid procedures was a period of exclusivity, but
2 after that period of exclusivity, with the entry of
3 the bid procedures order, they're free to go
4 solicit.

5 Well, we're told today that that solicitation
6 is now less than three weeks from now. Just how
7 much competition is going to be generated to drive
8 the price at this auction if we have less than
9 three weeks between now and the sale?

10 We looked at Exhibit 1, Your Honor, and I
11 directed Mr. Glade to the November 2nd date on
12 Exhibit 1. And I note for Your Honor that, as of
13 the end of that week, the Debtor is projected to
14 have three quarters of a million dollars in cash on
15 hand.

16 For this Court to provide an opportunity to
17 the creditors and equity holders of this case to
18 realize a significant return by putting over to a
19 confirmation hearing, permitting us to solicit
20 acceptances and go to a confirmation hearing before
21 November 2nd would give sufficient statutory time
22 and sufficient competition time for a real
23 opportunity to realize value in this case that is
24 going to be truncated and forever denied if the
25 Court approves the bid procedures as modified

1 today.

2 I note that, together with the increased
3 purchase price of \$2 million, is an increase in the
4 break-up fee of \$500,000. That's a 25-percent
5 break-up fee on that increased amount, and puts a
6 competing bid under the terms here of no less than
7 \$20.5 million. A hurdle, Your Honor, that chills
8 the bidding.

9 You heard from Mr. Glade and you saw in the
10 documents presented that PacBridge and Apollo set
11 out in January to find insider affiliated equity
12 holders with whom to propose a transaction. It's
13 not just happenstance that the individuals they
14 sought with whom to perform a transaction were
15 affiliated with insiders or insiders.

16 Your Honor, if you look at Schedule 13D, which
17 now I think has been submitted to the Court three
18 times as exhibits, you'll see that the secured
19 lenders are part of a voting trust. I'm using the
20 wrong term.

21 They've given their power of attorney to
22 Daoping Bao to vote their shares. And the power of
23 attorney to vote their shares goes with the power
24 to appoint four members of a seven-member board of
25 directors and to appoint the CEO. And the

1 provisions of that control agreement provide that
2 they will be required to permit Mr. Bao to vote
3 those shares in that manner to maintain control of
4 the company until they, among other things, until
5 they decide to withdraw from the agreement. It's
6 five years or until they decide to withdraw from
7 the agreement.

8 They have not withdrawn from that agreement.
9 Withdrawal from that agreement would deprive
10 Daoping Bao of the ability to continue to control
11 the company, and in holding that power to withdraw
12 their votes, they are saying Mr. Bao is doing what
13 they want done with the company. That is control,
14 Your Honor, and that fits squarely within 101.31 of
15 the Bankruptcy Code.

16 Is this an insider deal? Is that prohibited
17 by the Code? Not at all. Insider deals are done
18 all the time. They do, however, require greater
19 scrutiny. And when Your Honor looks at the manner
20 in which the Debtors' financial advisor put
21 together two potentially competing bids, one of
22 whom was an insider affiliate and the other of whom
23 was an equity holder seeking to combine with an
24 insider affiliate, Your Honor, it just doesn't hold
25 up to scrutiny.

1 This is a transaction that seeks to deprive
2 the current parties in interest in the case of the
3 value of the assets of this company.

4 This is, as we've noted before, one of those
5 rare occasions where the going-concern value does
6 not in fact match the liquidation value, which is
7 greater. And, yes, there's benefits to maintaining
8 a going concern. There are those jobs.

9 But, Your Honor, two things: First, as Ms.
10 Sanders told us, there's no guarantee given to any
11 of the employees who are being retained that they
12 will be employed for one day or one month or one
13 year or ten. There's no obligation on the part of
14 the purchaser to maintain the company as a going
15 concern, and there's significant incentive to do
16 otherwise.

17 The value in this company can be realized and,
18 under the Equity plan, a chief restructuring
19 officer would in fact continue operations of the
20 company and seek to sell it as a going concern.
21 The assets to be sold would be a handful of French
22 artifacts. The remaining artifacts at the
23 exhibitions in Las Vegas and Orlando can continue
24 operating.

25 The artifacts that are subject to the district

1 court's covenants and conditions would be continued
2 to be preserved and conserved, and the CRO would
3 seek to sell that to a qualified institution.

4 And we have been in front of Judge Smith, and
5 Judge Smith understands. We have advised Judge
6 Smith through the pleading that Mr. Wainger agreed
7 to file as part of the periodic report that we
8 would seek authority from the district court for
9 those things that the district court must give
10 authority.

11 One last point. The Debtor in the last couple
12 of weeks filed a pleading in the district court
13 reasserting its position that the artifact
14 collections do not require to be kept together as a
15 single collection under the covenants and
16 conditions, and we readily adopted that pleading in
17 whole cloth, and it appears in our disclosure
18 statement in support of the position of the Equity
19 Committee that you can do both. You can sell a
20 handful of artifacts, you can conserve and preserve
21 the American artifacts, you can continue to display
22 all of them. They are not mutually exclusive.

23 The disclosure statement that we filed
24 provides adequate information for creditors to make
25 a determination on voting. A final revision to the

1 disclosure statement would note that, through
2 paying post-confirmation interest and 100-plus
3 cents on the dollar to creditors, they are no
4 longer impaired, and we no longer require the two
5 thirds in amount to have that class vote in favor
6 of the plan.

7 That and all the other matters raised by Mr.
8 Winsberg today are confirmation issues.

9 This estate deserves the opportunity to choose
10 the manner in which the assets are managed, claims
11 are paid, and Equity is satisfied. The only way
12 that can happen is through a distribution of the
13 disclosure statement, setting of a confirmation
14 hearing, and permitting the Equity Committee to
15 proceed to realize the value that is trapped in
16 these assets that would be lost to the estate
17 forever if the sale were to be approved.

18 We think the bid procedures are egregious.
19 Cumulatively, they chill the bidding. Shortening
20 the time again will chill the bidding. This is
21 being designed to deprive that value to the
22 stakeholders in this estate. We ask the Court not
23 to do that. We ask the Court to approve our
24 disclosure statement and set this down for a
25 confirmation hearing.

1 THE COURT: Thank you. Thank you.

2 Anything further by anyone?

3 MR. CHUBAK: Your Honor, I'll be very brief.
4 I'm mindful of the time. I just wanted to address
5 a couple of key issues and give the Court a brief
6 update from my committee.

7 During Mr. Gurfein's presentation, he
8 represented to the Court that creditors would not
9 be impaired under the Equity Committee's proposal
10 because they'd be receiving post-confirmation
11 interest at the rate of 10 percent per annum, plus
12 a 20 percent premium from the sale of the French
13 artifacts proceeds.

14 First, I want to make sure that the Court is
15 aware that the Equity Committee's disclosure
16 statement itself describes creditors as impaired
17 under their own plan.

18 We also believe that creditors would be
19 impaired under the Equity Committee's plan because
20 it's not contemplated that they would get paid
21 until roughly a year following the effective date,
22 following the conclusion of any artifact
23 litigation, and following a sale process of the
24 French artifacts if the Debtor's estate, the post-
25 confirmation entity litigating that issue, is

1 ultimately successful.

2 In addition, during the break I had the
3 opportunity to confer with another committee
4 member. As the Court is aware, one of the members
5 of my three-member committee is a plan proponent
6 and the other two are independent. One of the
7 independent members, Ezra Jones, is in the
8 courtroom today. He supports the proposal made
9 earlier today.

10 During the break I had the opportunity to
11 confer with my third committee member, who also
12 supports the same proposal.

13 So without the support of the largest
14 creditors and without the support of the Creditors
15 Committee, I think it's extremely difficult to
16 confirm the Equity Committee's plan.

17 1129(a) is clear that, if a class is impaired
18 that, that you need the support of an impaired
19 class of claims.

20 And the last issue that I wanted to raise
21 before the Court is that to date the museums have
22 represented that they would have an issue bidding
23 at auction under the proposed bid procedures, but I
24 thought it worthwhile to raise the issue that there
25 are certain provisions in the bid procedures that

1 would absolutely preclude the museums from bidding,
2 and that's a good-faith deposit and the requirement
3 that there be no material alterations to the Asset
4 Purchase Agreement.

5 I think it worthwhile to hear from Davis Polk
6 about this issue, but we support the proposal made
7 earlier today regarding the -- to resolve the
8 disclosure statement -- to resolve the issues
9 pertaining to the Debtors' objections to the two
10 disclosure statements.

11 THE COURT: Thank you. Thank you very much.

12 MR. MCCLAMMY: Your Honor, if I may, just very
13 briefly?

14 THE COURT: Certainly.

15 MR. MCCLAMMY: Again, Jim McClammy on behalf
16 of the Trustees for the National Maritime Museum.

17 Among other things, in the Debtors'
18 presentation today, they mentioned that there was
19 no issue with notice and that adequate notice had
20 been given.

21 I would beg to defer with that, as there's
22 been material changes that have happened just today
23 and just before coming in that I believe the
24 museum's, as an interested member here, who is not
25 only interested in the artifacts but the public

1 interest in the TITANIC collection, would say it's
2 depriving even the creditors of the opportunity of
3 allowing us to consider whether or not we would
4 raise the purchase price that's included in our
5 plan of reorganization, which is something that has
6 been under discussion with creditors, but, as you
7 can imagine, given the time difference between here
8 and Europe, was impossible for us to be able to
9 actually respond to during the course of the day
10 today, and I still believe that's very possible.

11 The Debtors have also mentioned that there's
12 one viable plan for going forward, and I also would
13 disagree with that.

14 We've confirmed with the committee and I can
15 confirm with the Court that our fundraising process
16 is well under way.

17 The museum has a history of funding projects
18 and acquisitions that would support our ability to
19 meet the obligations here, and, as of yesterday, we
20 had over half of the amount fully funded, either
21 through financing on an unsecured basis --

22 MR. WINSBERG: Your Honor, just real briefly.
23 It's late in the day.

24 The museum doesn't have standing. They're not
25 a creditor or party in interest. To the extent

1 this is evidence, I object.

2 MR. MCCLAMMY: I'm sorry.

3 MR. WINSBERG: There's no evidence of this.

4 And so, just for the record, this is not evidence
5 and I object to it coming in as evidence.

6 THE COURT: Thank you.

7 MR. MCCLAMMY: Your Honor, I'm not presenting
8 it as evidence. I am presenting it as argument,
9 because I believe that the creditors have been
10 derived of the opportunity to hear that.

11 And after exclusivity has expired and plans
12 have been put forward, to only minutes before a
13 hearing takes place say that we've got something
14 that the Court has to consider, has to consider
15 today that prevents plans from going forward, I
16 believe that's actually improper.

17 But that being said, Your Honor, I do believe
18 we have standing as a plan proponent, and also as
19 someone who may be a potential bidder.

20 I agree completely with what the committee has
21 said. It's impossible under the current situation
22 for the museum, a public entity, to participate in
23 the bidding process. We've offered seven-figure
24 deposits, as I believe the Court has been made
25 aware, but cannot do that on a non-refundable basis

1 just given our situation.

2 And as I mentioned, our fundraising is well
3 under way. We believe at time for confirmation,
4 when we need to prove the ability the finance and
5 to be able to consummate the plan, would be the
6 time to have that all addressed.

7 It's also unclear to us why the Debtors would
8 like to proceed with the process when they claim
9 that they have no ability to run past a certain
10 date, when their process is in fact uncertain in
11 front of the district court.

12 Why not have the alternative processes going
13 so that if your stalking horse purchaser, for
14 example, is unable to be confirmed by the district
15 court as the purchaser? You might have a backup to
16 that here, especially in light of the fact that,
17 although they're stating that the Asset Purchase
18 Agreement calls for abiding by the terms of the
19 covenants and conditions, the witnesses on behalf
20 of the stalking horse purchasers weren't able to
21 say in court today, even though they'd put up
22 additional millions in support of their bid, that
23 they have not made any determination as to whether
24 or not they would in fact seek to try to break up
25 the collection, which we believe is something that

1 the district court is very much interested in.

2 And if you've got a situation in which, either
3 because of lack of approval from the district court
4 or lack of willingness of the ultimate purchaser to
5 abide by conditions that the district court may ask
6 the purchasers to confirm, why it should be that
7 the plan here is already foregone as a result of
8 this process.

9 So we would ask Your Honor to consider that as
10 you're making your determinations.

11 And I do agree with the committee that, if it
12 is the case that our disclosure statement does not
13 go forward, and we do believe it should, if it does
14 not go forward, we would ask the Court to consider
15 modifying the terms of the bidding procedures such
16 that there was no pre-financing requirement and no
17 non-refundable deposit requirement such that the
18 museum and its supporters may be able to consider
19 participating in the bidding procedures.

20 THE COURT: Thank you.

21 MR. MCCLAMMY: Thank you, Your Honor.

22 THE COURT: Anything further?

23 Yes.

24 MR. FOX: Good afternoon, Your Honor. I'm
25 Steven Fox. I represent an interested party, Cedar

1 Bay Entertainment, which is actually quite heavily
2 impacted by this Chapter 11 case. It operates
3 museums that are TITANIC themed in the eastern
4 United States and in the midwest, and the Debtors'
5 operations have had financial and reputational
6 impact on my client.

7 I have two basic comments to make today.

8 One, I was staggered when I listened to the
9 comment made to this Court that you either accept
10 what we, the purchasers of the Debtors' assets, are
11 making, our offer, our deal, you take it today or
12 we're going to walk.

13 Two witnesses walked back from that rather
14 bold statement. I might make it a stronger
15 statement and call it bold, but it was
16 inappropriate, and it was an idle threat. They've
17 been here for months, they're going to be here for
18 months.

19 Second comment, Your Honor, the projections.
20 I haven't seen the projections. They weren't
21 provided to the attorneys sitting in the courtroom.
22 But those are projections reflecting that in four
23 months the Debtor will be out of money.

24 In four months, the plan or the plans can be
25 voted on, they could be considered by the Court,

1 and the Debtor still has the ability to go forward.
2 Expenses may be lower, income may be higher.

3 Frankly, I'm not concerned if administrative
4 claims can't be paid for the next month or two or
5 couple of months extra. It is what it is, and the
6 administrative claimants are big boys, they can
7 take care of their own financial issues.

8 I urge the Court to continue the disclosure
9 statement and plan process, at least for the Equity
10 Committee's plan and disclosure statement, which
11 appears to be feasible at this point. They do not
12 have the unsecured creditors as impaired anymore.
13 It appears that they are unimpaired, according to
14 the representations that are made. That takes care
15 of a lot of voting issues and voting problems.

16 And then to the extent that funds are
17 available and that funds are sufficient, that's a
18 confirmation issue.

19 Thank you, Your Honor.

20 THE COURT: Thank you.

21 Anything further, Mr. Winsberg?

22 MR. WINSBERG: Your Honor, I would urge Your
23 Honor read the district court's transcript. I
24 think Mr. Gurfein took some liberties with it.

25 The district court was very -- the Debtors

1 were very clear why they don't believe a stock
2 transfer of RMST requires the district court
3 approval. We were seeking it anyways, and the
4 district court ruled that her view was NOAA's view,
5 which you still need approval even if it's a stock
6 sale.

7 The district court also said -- and I'll read
8 from page 10 of the transcript where she's agreeing
9 with Your Honor on jurisdiction, that the court
10 does have to approve the transfer of these assets
11 to be sure that following this court's order -- the
12 district court -- the covenants and conditions to
13 keep everything together and subject to the
14 jurisdiction of this court.

15 We're going to have to go back to district
16 court to make that showing.

17 The rest of the stuff that's gone on between
18 the museum and these other interested parties is
19 just noise. There's no money behind the Creditors
20 Committee plan. The Creditors Committee counsel
21 all but walked away from it.

22 We'd ask Your Honor -- it's been a long day.
23 We ask Your Honor to deny both disclosure
24 statements, approve the Debtors' bid procedures.

25 Thank you, Your Honor.

1 THE COURT: Very good.

2 All right. Thank you all very much. It's
3 been a long day. It's after 5:00 now -- I
4 apologize -- the building has to close.

5 But this determination will be made very, very
6 soon. I will contact you all. It may be by
7 telephone, it may be in person. I don't know how
8 it will be. It needs to be made right away. We'll
9 do it right away. And I thank you all very much.

10 (At 5:11 p.m., the hearing was concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, Cindy Danese, a Notary Public, State of Florida at Large, do hereby certify that the attached represents the proceedings before the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division, before the Honorable Paul M. Glenn, Bankruptcy Judge, in the matter of In Re: RMS Titanic; such transcript is an accurate recordation of the proceedings which took place. A transcript of this proceeding has been produced on September 6th, 2018.

STATEWIDE REPORTING SERVICE

Cindy Danese